

No. 95707-0

No. 77094-2 I

COURT OF APPEALS, DIVISION I
OF THE STATE OF WASHINGTON

SOLOMON MCLEMORE,

Petitioners/Defendants

v.

CITY OF SHORELINE,

Respondent/Plaintiff

MOTION FOR DISCRETIONARY REVIEW

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A. IDENTITY OF PETITIONER

Solomon McLemore, by and through counsel of record, David Iannotti, ask this court to accept review of the RALJ decision designated in part B of this response.

B. DECISION

McLemore respectfully request pursuant to RAP 2.3(d)(2), (d)(3), and (d)(4), that this court grant his Motion for Discretionary Review of King County Superior Court Judge Steven Rosen’s Order on RALJ Appeal, dated and filed June 2, 2017, which affirmed the conviction of McLemore for Obstructing a Law Enforcement Officer. McLemore was found guilty for refusing to open the door to his home and demanding a warrant during a warrantless search by the Shoreline Police. The Trial Court denied McLemore’s Knapstad motion, finding that a person needs to assist the police in the execution of a warrantless search regardless of whether that person believes the officers are violating their 4th Amendment rights. The trial court further prohibited McLemore from presenting any evidence or arguing his belief that he could refuse entry because the officers did not have a warrant. At RALJ the Superior Court upheld the rulings by Shoreline District Court and affirmed the conviction.

A copy of the Superior Court decision affirming the trial court decision is in the Appendix as Exhibit 1.

C. ISSUES PRESENTED FOR REVIEW

1. Whether the Court erred by denying McLemore's Motion to Dismiss, as the law does not require any duty of a person to act in a warrantless search of their residence?
2. Whether there was sufficient evidence that McLemore willfully hindered or delayed a law enforcement officer in order to support a conviction of Obstructing a Law Enforcement Officer?
3. Whether the Court erred by prohibiting McLemore from presenting evidence of his defense?

D. STATEMENT OF THE CASE.

On March 1, 2017, around 1:30 in the morning, Officers Andrew Boyer, Jeremy Dallon and Ben Emmons reported to a verbal disturbance in the area of the Arabella Apartments in Shoreline, Washington. See Report of Proceedings (hereinafter "RP") 32, 56-57, 94, see Appendix 2, selected parts of the transcript. When the officers arrived in the area they spoke to the citizen witness that called 911 and he reported that two people were arguing. Id. The Officers heard a woman yell "You can't leave me out here", "I'm going to call 911 or call the police", and "I'm reconsidering our relationship." RP 33, 59, 96. The officers determined that the yelling was coming from an apartment above a drycleaner. RP 35,36.

The Officers started knocking on the door, ringing the doorbell and announcing that they were Shoreline Police. RP 38, 39, 60, 63, 97. As soon as they started knocking, the argument ceased. Id. The Officers estimated that they were knocking for about eight minutes. Id. They then proceeded to use the public-address system, telling the occupants of the apartment that they needed to come to the door or they would break the door down. RP 40. The officers then heard glass shattering two separate times. RP 41 42. The officers then made the decision to break down the door. Id.

Dispatch had a line inside with someone talking on the phone, but there was no additional evidence as to what was discussed over the phone. RP 43. As the officers started using a hatchet to break down the door, McLemore contacted the officers through the door. RP 65. McLemore repeatedly told the officers that he did not have to let them in and that they were violating his civil rights, that they needed a search warrant. RP 66-68, 105, 149, 150, 168. The Officers eventually were able to breach the door with the aid of the Shoreline Fire Department and arrested McLemore for Obstructing. RP 44, 49, 107, 116 After interviewing McLemore and his girlfriend Lisa Janson, the officers determined that no other crimes had been committed. RP 44, 49, 116.

There was no additional evidence that McLemore had done anything beyond not unlocking the door to prevent the officers from entering the home. RP 118, 199. There was no evidence that McLemore barricaded the door, locked additional doors, hid from the officers, or added additional locks to the door. Id. Also, there was no evidence that Lisa Janson could not have unlocked the door. RP in general.

Procedural History

McLemore was charged by citation and complaint in the City of Shoreline with Obstructing a Law Enforcement Officer for the incident that occurred on March 1, 2016. See Appendix 3, Complaint. McLemore entered a plea of not guilty at arraignment on March 14, 2016. The matter was set for trial and McLemore noted a motion contesting the constitutionality of the charge.

McLemore filed a motion to dismiss on July 28, 2016. McLemore argued that a person cannot be convicted of obstructing for exercising the constitutional right to be free of warrantless searches. The Court heard oral argument on August 11, 2016. RP 2-10. The Court denied the motion finding that “Delay need to call Shoreline Fire for tools to break in the residence all make the community caretaking function an exception to 4th amendment privacy consideration.” [sic] See Appendix 4, Court Order

dated August 17, 2016. The Court based the decision on State v. Steen, 164 Wn. App. 789 (2011).

On September 27, 2016, the matter proceeded to trial. The City successfully moved to exclude any reference by McLemore to the Officer's not obtaining a search warrant. The Court granted the motion. See Appendix 5, City's Trial Updated Memorandum with notations and rulings by the Court, dated September 27, 2016; see also RP at 17-18. The Trial Court continually sustained the City's objections to any reference to McLemore exercising his constitutional right, including preventing the jury from watching video of the incident because it included McLemore asking for a search warrant. RP 51, 90, 149, 150, 168. Even the Jurors recognized that this is an issue. See Appendix 6, Inquiry from Jury and Court's Response, dated September 29, 2016.

The jury returned a verdict of guilty.

The RALJ appeal was argued before Judge Rosen on June 2, 2017. Judge Rosen affirmed the Shoreline District Court ruling and upheld the conviction. This Motion for Discretionary Review was timely filed.

E. ARGUMENT WHY REVIEW SHOULD BE ACCEPTED

This case deals with a matter of first impression in this State. There is no Washington case on point that addresses whether a person exercising their rights under the 4th Amendment of the US Constitution and Article I,

Section 7 of the Washington Constitution can be found guilty of Obstructing for not opening a door to their home for a warrantless search. There is Federal Case law directly on point that is ignored by the decisions in this case. *See United States v. Prescott*, 581 F.2d 1343 (9th Cir. 1978). Discretionary review is appropriate pursuant to RAP 2.3(d)(2) as this case involves a significant question of law under the Constitution of the State of Washington and of the United States.

Discretionary review is also appropriate pursuant to RAP 2.3(d)(3). This is a matter of public interest as it is one of first impression regarding whether a person has a duty to assist police in a warrantless search. There is no precedent in this state that requires a citizen to assist officers in a warrantless search. As stated above, there is Federal Case law that says otherwise. For these reasons, it is a matter of public interest.

By ignoring the 9th Circuit decision and also by preventing McLemore from presenting a defense, Discretionary review is also appropriate pursuant to RAP 2.3(d)(4). The Trial Court has departed so far from the accepted and usual course of judicial proceedings.

For these reasons, and as discussed below, review is appropriate.

1. The Court erred by denying McLemore’s Motion to Dismiss, as the law does not require any duty of a person to act in a warrantless search of their residence.

The principal standard for the charging decision is the prosecution's ability to prove all elements of the charge. State v. Campbell, 103 Wn.2d 1, 26, 691 P.2d 929 (1984); State v. Judge, 100 Wn.2d 706, 713, 675 P.2d 219 (1984); State v. Lee, 87 Wn.2d 932, 934, 558 P.2d 236 (1976). A trial court may dismiss a prosecution before trial if the State’s pleadings, including any bill of particulars, are insufficient to make a prima facie case for all the elements of the charge. State v. Knapstad, 107 Wn.2d 346, 352-353, 729 P.2d 48 (1986). The defense is entitled to dismissal pursuant to Knapstad if, after considering all reasonable inferences from the evidence most favorably to the State, the court finds there is insufficient evidence tending to prove a defendant committed every element of a charge. Id.

In this case, McLemore was charged with Obstructing pursuant to RCW 9A.76.020(1). In Washington State, the obstructing a law enforcement officer statute, RCW 9A.76.020, states:

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.

However, not all acts that hinder or delay law enforcement officers are sufficient to support a charge of obstructing. In Washington State, “Our

cases have consistently required conduct in order to establish obstruction of an officer.” State v. E.J.J., 183 Wn.2d 497, 502, 354 P.3d 815 (2015); State v. Williams, 171 Wn.2d 474, 485, 251 P.3d 877 (2011).

In E.J.J., the police kept telling E.J.J. to shut the door to the house. E.J.J., at 500. Instead, he kept opening the door and continued verbally abusing the police, who were 10-15 feet away. E.J.J., at 500. Multiple times the police walked back to the house and shut the door, only for EJJ to re-open it and continue to verbally assault the police. *Id.* Eventually the police arrested EJJ for obstruction. *Id.* The Washington State Supreme Court ruled

“That E.J.J.'s behavior may have caused a minor delay is of no import. Although the officer's request that E.J.J. return to his home and close both doors might have been an attempt for a more convenient resolution of the situation, ‘[s]tates cannot consistently [sic] with our Constitution abridge those freedoms to obviate slight inconveniences or annoyances.’ **In the First Amendment context, we must be vigilant to distinguish between obstruction and inconvenience.**” E.J.J., at 506 (quoting Giboney v. Empire Storage & Ice Co., 336 U.S. 490, 501-502, 69 S. Ct. 684, 690, 93 L. Ed. 834 (1949)). **(emphasis added).**

In State v. Bessette, the Washington Court of Appeals held that the defendant could not be convicted of obstruction for refusing to allow police to enter his residence without a warrant in order to arrest a third party. State v. Bessette, 105 Wash.App. 793 (2001). The court held a citizen does not commit the crime of obstructing when he exercises his

right under the Fourth Amendment and Article 1 Section 7 of the Washington Constitution to refuse to allow police warrantless entry in his home. Id. at 800.

Another example of an act that did not amount to obstructing occurred in State v. Mendez. In Mendez, police instructed a vehicle passenger to stay where he was after police stopped the vehicle, but the passenger ran away and was ultimately convicted of obstruction for doing so. State v. Mendez, 137 Wn.2d 208 (1999). The Washington Supreme Court held that, absent reasonable suspicion or danger to an officer, police may not detain a vehicle's passenger without individualized reasonable suspicion. Therefore, the defendant's act of leaving the vehicle when police had no legal basis to detain him did not constitute obstructing. Id. at 225.

Although this issue does not appear to have been presented to date in Washington, courts in other states have repeatedly held that refusing to open a door in response to a police order is not obstruction. See, e.g., Beckom v. Georgia, 286 Ga. App. 38, 41-42, 648 S.E.2d 656 (2007) (holding that refusal to answer police's knocking on door, ringing of doorbell, and phone calls is not obstruction); Adewale v. Whalen, 21 F. Supp. 2d 1006, 1011 n.4 (D. Minn. 1998) (holding that refusing to open the door for police is not obstruction); City of Columbus v. Michel, 55 Ohio App. 2d 46, 47-48, 378 N.E.2d 1077 (1978) (holding that refusing to

open door in response to police officer's repeated requests is not obstruction); Henderson v. County of L.A., No. 05-3019, 2009 WL 943891, at *5 (C.D. Cal. April 6, 2009) (acknowledging that refusal to cooperate with police, such as refusing to open door or allow entry, is not obstruction); Kansas v. Robinson-Bey, No. 98,614, 2008 WL 3916007, at *4-6 (Kan. Ct. App. Aug. 22, 2008) (holding that defendant's refusal to comply with police instructions to come out of a house was not obstruction); Ohio v. Prestel, No. 20822, 2005 WL 2403941, at *2 (Ohio Ct. App. Sept. 30, 2005) (“[R]efusing to answer the door when police knock and identify themselves and refusing to obey an officer's request for information does not constitute obstructi[on].”).

Indeed, the law is clear that citizens have an affirmative constitutional right under the Fourth Amendment *not* to assist the police in these types of circumstances. Allowing this case to proceed would therefore establish a rule allowing citizens to be punished for exercising their Fourth Amendment rights.

In the seminal case United States v. Prescott, 581 F.2d 1343 (9th Cir. 1978), the Ninth Circuit held that a citizen's “passive refusal to consent to a warrantless search is privileged conduct which cannot be considered as evidence of criminal wrongdoing” because to hold otherwise would be to

impose “an unfair and impermissible burden” on “the assertion of a constitutional right.” *Id.* at 1351. The court explained:

When the officer demands entry but presents no warrant, there is a presumption that the officer has no right to enter, because it is only in certain carefully defined circumstances that lack of a warrant is excused. **An occupant can act on that presumption and refuse admission. He need not try to ascertain whether, in a particular case, the absence of a warrant is excused.** He is not required to surrender his Fourth Amendment protection on the say so of the officer. The Amendment gives him a constitutional right to refuse to consent to entry and search. His asserting it cannot be a crime. Nor can it be evidence of a crime. **(emphasis added).**

Id. at 1350-51 (citations omitted); *see also* Camara v. Mun. Court of S.F., 387 U.S. 523, 540, 87 S. Ct. 1727, 18 L. Ed. 2d 930 (1967) (holding that the defendant could not constitutionally be convicted for refusing to allow warrantless inspection); District of Columbia v. Little, 339 U.S. 1, 7, 70 S. Ct. 468, 94 L.Ed. 599 (1950) (holding that the right to privacy “holds too high a place in our system of laws to” allow “criminal punishment on one who does nothing more” than make verbal protests and refuse to unlock her door); Kentucky v. King, 563 U.S. 452, 469–70, 131 S. Ct. 1849, 1862, 179 L. Ed. 2d 865 (2011), (“When law enforcement officers who are not armed with a warrant knock on a door, they do no more than any private citizen might do. And whether the person who knocks on the door and requests the opportunity to speak is a police officer or a private citizen, the occupant has no obligation to open the door or to speak.”).

These settled constitutional principles have been repeatedly applied to hold that citizens constitutionally cannot be convicted of obstruction for refusing police demands for entry. For example, in New Jersey v. Berlow, 284 N.J. Super. 356, 360-65, 665 A.2d 404 (1995), the court reversed a conviction for obstruction on Fourth Amendment grounds where the defendant had slammed and locked his door in response to the police's demand for entry. (Here, by contrast, McLemore simply did not open his door and demanded the police obtain a warrant). The court expressly held that "[o]ne cannot be punished" for obstruction "for passively asserting" one's Fourth Amendment right to deny entry. *Id.* at 408.

Other courts have persuasively held likewise. *See, e.g., Ohio v. Howard*, 75 Ohio App. 3d 760, 772, 600 N.E.2d 809 (1991) ("Appellant's assertion of his constitutional right to refuse to consent to the entry and search cannot be a crime and cannot be used as evidence against him for purpose of establishing the elements of obstruction of justice. Courts disapprove of penalties imposed for exercising constitutional rights."); Illinois v. Hilgenberg, 223 Ill. App. 3d 286, 293-294, 585 N.E.2d 180 (Ill. App. Ct. 1991) (holding that the defendant had a Fourth Amendment right to refuse entry requested by police and that "the assertion of that right does not constitute a crime"); Strange v. Tuscaloosa, 652 So.2d 773, 776 (Ala. Crim. App. 1994) (holding that defendant's actions to prohibit a

warrantless entry and search “cannot subject her to a criminal conviction”). The rule should be at least as strong in Washington, given that the right of privacy embodied in Article I, Section 7 of the Washington Constitution is generally interpreted to be *broader* than the Fourth Amendment. *See, e.g., State v. White*, 97 Wash. 2d 92, 110-112, 640 P.2d 1061, 1070 (1982).

The closest Washington case on point is *State v. Steen*, 164 Wash. App. 789, 800-802, 265 P.3d 901, 908 (2011), as amended (Dec. 20, 2011). The Division 2 Court of Appeals found that there was sufficient evidence that Steen obstructed an officer by not obeying the officers’ lawful orders to open the trailer’s door and to exit with his hands up. *Id.* Division 2 also denied Steen’s argument that it was a violation of Steen’s First Amendment right to free speech and Fifth Amendment right to remain silent. *Id.* at 808, 812. However, Division 2 did not address a Fourth Amendment analysis, because Steen never claimed he was exercising his 4th amendment. (The dissent recognized that there is an issue under the Fourth Amendment.) *Id.* at 817-818.

In the present case, as in Bessette, Mendez, and E.J.J., McLemore may have delayed law enforcement personnel. However, as was the case in Bessette, he did so while exercising his right under the Washington Constitution and the United States Constitution to be free from unwarranted

search or seizure. While certain exigent circumstances allow exceptions to this right, it is not McLemore's duty to evaluate whether a valid exception exists.

Under the Fourth Amendment and Article 1, Section 7 of the Washington Constitution, warrantless searches and seizures are per se unreasonable. State v. Williams, 102 Wn.2d 733, 736, 689 P.2d 1065 (1984). These provisions place a limitation on governmental searches and arbitrary intrusions into private affairs without first establishing probable cause. State v. Smith, 88 Wash.2d 127, 559 P.2d 970 (1977); Seattle v. See, 67 Wash.2d 475, 408 P.2d 262 (1965).

There are a few "jealously and carefully drawn exceptions" to the warrant requirement that apply where the societal costs of obtaining a warrant outweigh the reasons for prior recourse to a neutral magistrate, such as danger to the law officers or the risk of loss or destruction of evidence, outweigh the reasons for prior recourse to a neutral magistrate. Williams, 102 Wn.2d at 736; State v. Houser, 95 Wn.2d 143, 149, 622 P.2d 1218 (1980); Arkansas v. Sanders, 442 U.S. 753, 759, 99 S. Ct. 2586, 61 L. Ed. 2d 235 (1979), overruled on other grounds by California v. Acevedo, 500 U.S. 565, 111 S. Ct. 1982, 114 L. Ed. 2d 619 (1991). The burden is on the State to show that the particular search or seizure falls within one of these exceptions. Williams, 102 Wn.2d at 736; Houser, 95 Wn.2d at 149.

McLemore has a right to request a warrant, just as officers have the right to knock down his door for a warrantless search. McLemore has no duty to act and give up his right to be free of searches. If the officers believe they have the right to enter without a warrant, then it is not McLemore's duty to assist them in infringing on this Fourth Amendment right. If the Officers believed they had the right to enter, then they can use force to do so. The inconvenience to the Officers for having to execute a warrantless search does not amount to obstructing. Considering all reasonable inferences from the evidence most favorably to the City, there was insufficient evidence to prove that McLemore was guilty of obstructing. If the City's pleadings were insufficient to establish a prima facie case for each element of the crime charged then the court should have dismissed the case prior to trial. Knapstad, 107 at 352-53.

2. There was insufficient evidence that McLemore willfully hindered or delayed a law enforcement officer.

Assuming the Trial Court did not err by allowing the case to go forward to a jury, at the conclusion of the trial there was insufficient evidence to support a finding of guilt for the same reasons articulated above. The due process guarantee of the Fourteenth Amendment protects an accused from conviction absent sufficient evidence supporting each and every element of the charged crime beyond a reasonable doubt. In re

Winship, 397 U.S. 358, 364, 25 L.Ed.2d 368, 90 S.Ct. 1068 (1970); State v. Acosta, 101 Wn.2d 612, 615 (1984); RCW 10.58.020. In a criminal case, a defendant may challenge the sufficiency of the evidence: (1) before trial, (2) at the end of the state's case in chief, (3) at the end of all the evidence, (4) after verdict, and (5) on appeal. State v. Lopez, 107 Wash.App. 270, 277, 27 P.3d 237 (2001). The evidence presented in a criminal trial is legally sufficient to support a guilty verdict if any rational trier of fact, viewing the evidence in a light most favorable to the city, could find the essential elements of the charged crime beyond a reasonable doubt. State v. Bourne, 90 Wash.App. 963, 967-68, 954 P.2d 366 (1998).

A challenge to the sufficiency of the evidence admits the truth of the prosecution's evidence and all rational inferences therefrom. State v. Hansen, 122 Wn.2d 712, 718 (1993); State v. Spruell, 57 Wash.App. 383 (1990). The Appellate Court will defer to the trier of fact on any issue that involves "conflicting testimony, credibility of witnesses, and the persuasiveness of the evidence." State v. Thomas, 150 Wn.2d 821, 874-75, 83 P.3d 970 (2004).

After all the evidence was admitted in trial, there was no evidence that McLemore did anything beyond refusing entry to the Shoreline Police Officers into his home. McLemore did not barricade the entry or hide from the officers. He did not add additional locks to the door or lock the

second door. McLemore told the officer's that they were violating his rights and refused to unlock the door that was already locked at the time the officers attempted to enter the home. For these reasons, there is insufficient evidence that McLemore obstructed the Shoreline Officers by exercising his constitutional rights.

3. The Court erred by prohibiting McLemore from presenting evidence of his defense.

McLemore has a fundamental due process right to present a defense. “[I]n plain terms the right to present a defense [is] the right to present the defendant's version of the facts as well as the prosecution's to the jury so it may decide where the truth lies. Just as an accused has the right to confront the prosecution's witnesses for the purpose of challenging their testimony, he has the right to present his own witnesses to establish a defense. This right is a fundamental element of due process of law.”

Taylor v. Illinois, 484 U.S. 400, 410, 108 S.Ct. 646, 98 L.Ed.2d 798 (1988) (quoting Washington v. Texas, 388 U.S. 14, 19, 87 S.Ct. 1920, 18 L.Ed.2d 1019 (1967)).

Much like the trial Court in Prescott, the Trial Court in this case refused to permit the line of argument that McLemore was attempting to exercise his constitutional right. United States v. Prescott, 581 F.2d 1343,

1350 (9th Cir. 1978). McLemore was not even given the opportunity to present his version of the incident.

Knowledge is an element the government is required to prove in order to find McLemore guilty of Obstructing. The Court prohibited McLemore from presenting any evidence of his belief and understanding of the situation.

For the same reasons discussed above, McLemore should have been able to present evidence that he believed that he was exercising his constitutional rights and the Jury should have been instructed that a person cannot be found guilty of obstructing for exercising those rights.

F. CONCLUSION

For the reasons indicated in Part E above, McLemore respectfully requests the Court of Appeals grant his request for discretionary review pursuant to RAP 2.3 (d)(2), (d)(3), and (d)(4), so McLemore may argue his position in support of reversal of the Shoreline District Court and Superior Court Orders in this case.

DATED: July 14, 2017.

Respectfully Submitted,

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G. APPENDIX

APPENDIX 1: Order on RALJ Appeal, dated and filed June 2, 2017

APPENDIX 2: Selected portions of the Transcript of Proceedings

APPENDIX 3: Complaint, Cause No.: 616010940, dated March 1, 2016

APPENDIX 4: Court Order dated August 17, 2016.

APPENDIX 5: City's Trial Updated Memorandum with notations and rulings by the Court, dated September 27, 2016

APPENDIX 6: Inquiry from Jury and Court's Response, dated September 29, 2016.

No. 77094-2 I

COURT OF APPEALS, DIVISION I
OF THE STATE OF WASHINGTON

SOLOMON MCLEMORE,

Petitioners/Defendants

v.

CITY OF SHORELINE,

Respondent/Plaintiff

MOTION FOR DISCRETIONARY REVIEW

Appendix 1

SUPERIOR COURT OF THE STATE OF WASHINGTON
COUNTY OF KING

STATE OF WASHINGTON

vs.

Appellant,

NO. 16-1-07811-3 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 8.3, 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 Defendants guilty. 3) The trial court did not abuse its discretion in suppressing evidence of the Defendants belief he was exercising a const. right as it was irrelevant evidence and not impactful on the elements of the crime.

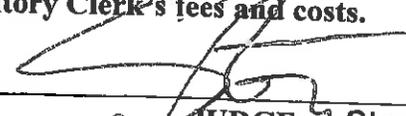
IT IS HEREBY ORDERED that the above cause is:

AFFIRMED; REVERSED; MODIFIED;

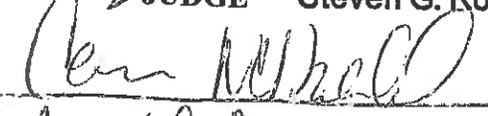
COSTS Waived

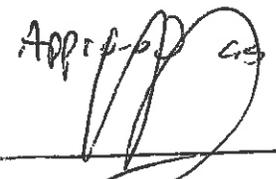
REMANDED to King County District Court for further proceedings, in accordance with the above decision and that the Superior Court Clerk is directed to release any bonds to the Lower Court after assessing statutory Clerk's fees and costs.

DATED: 6/2/17


JUDGE Steven G. Rosen

Counsel for Appellant


Counsel for Respondent


Appellant's Counsel
3757

No. 77094-2 I

COURT OF APPEALS, DIVISION I
OF THE STATE OF WASHINGTON

SOLOMON MCLEMORE,

Petitioners/Defendants

v.

CITY OF SHORELINE,

Respondent/Plaintiff

MOTION FOR DISCRETIONARY REVIEW

Appendix 2

1 (August 11, 2016)

2 JUDGE SMITH: Cause number 616010940. I'm going to
3 be right back, because I had two briefs and I didn't know (inaudible). Now
4 I've got them both.

5 (Court is in recess)

6 JUDGE SMITH: ... City versus McLemore. It's a
7 Knapstad motion. Two briefs were filed by the defense. I don't think the
8 City filed any briefs, is that right?

9 MS. ROBERTS: Yes. The City did file a brief, Your
10 Honor.

11 JUDGE SMITH: Oh, you did?

12 MS. ROBERTS: The City filed a brief on May 31st. It
13 talks about the community caretaking function. The City also has a case
14 to provide to the Court at this time. I provided Counsel with a copy as
15 well. That's State versus Steen, which ties into the brief that we filed. Do
16 you want me to make another copy (inaudible)? I mean that's your copy,
17 but of the City's brief?

18 JUDGE SMITH: No. I've got it right here, I guess.

19 MS. ROBERTS: May 31st.

20 JUDGE SMITH: It was under Judge Anderson's
21 calendar. So I didn't...

22 MS. ROBERTS: May 31st is the day it was signed, Your
23 Honor.

1 JUDGE SMITH: I don't see it under either, Your Honor.

2 MADAM CLERK: I'm going to look under the other case in
3 the docket.

4 JUDGE SMITH: What we're dealing with currently is the
5 940. Did you get a copy of their brief?

6 MS. PIMENTEL: The original brief, yes, Your Honor.

7 JUDGE SMITH: And when was that filed?

8 MS. ROBERTS: Ending in 040. That was from May –
9 well, it was signed May 31st.

10 MS. PIMENTEL: Yeah, the document indicates the 31st.

11 MS. ROBERTS: That it was filed on the brief.

12 JUDGE SMITH: It should be right here then. This is
13 weird. This thing goes from 5/13, 5/19. Defense first motion. Okay. I
14 don't see anything from the State.

15 MADAM CLERK: The clerk made a docket that it was filed
16 but it's not scanned.

17 MS. ROBERTS: If we could make a copy.

18 MR. KUTZNER: If I may approach Your Honor.

19 JUDGE SMITH: Sure. Thank you. The thing that always
20 makes these Knapstad motions interesting is the fact that, is this purely a
21 factual thing from the police reports or does search and seizure come into
22 question as part of it. And is that addressed in any of the cases?

1 MS. PIMENTEL: Your Honor, that's why defense filed the
2 additional briefing, which wasn't...

3 JUDGE SMITH: Yeah, but is that the issue? Is that true
4 or not true, or do you have to file a separate motion to suppress evidence
5 as opposed to making a Knapstad motion?

6 MS. PIMENTEL: It's an obstruction.

7 JUDGE SMITH: Because to suppress evidence you have
8 testimony. Knapstad you don't. It's just on the police report. Is that
9 sufficient?

10 MS. ROBERTS: There is no physical evidence is my
11 understanding in this.

12 MS. PIMENTEL: Right.

13 MS. ROBERTS: So I don't know that a 3.6 is...

14 MS. PIMENTEL: Right. It's an obstruction case that's just
15 an issue.

16 JUDGE SMITH: Yeah. Yeah. Well, it's your motion so I
17 will hear from defense first.

18 MS. PIMENTEL: And Your Honor, I think the motion was
19 fairly detailed as far as what Mr. Iannotti submitted. It's the second
20 briefing. The City did...

21 JUDGE SMITH: Are any facts in dispute? Apparently
22 not, because we don't have additional testimony.

1 MS. PIMENTEL: Correct. We're not having any
2 additional testimony. Mr. Iannotti points out in the brief that even if
3 defense was to concede that there was a delay in the officer's ability to
4 respond, the issue really here is the willingness portion of the statute. And
5 what it boils down to is if the officer wanted to enter without a warrant that
6 he could find exigent circumstances. And certainly if he felt that there was
7 then he could enter. Or he could have gotten a warrant and entered.
8 Neither of those would require Mr. McLemore to assist the police in
9 making it easier by opening the door. There's no -- technically there's no
10 case that's -- no Washington State Supreme Court case that's on point in
11 Washington.

12 Mr. Iannotti points out that the City did give us a copy of
13 State versus Steen. He does point out as well that that is probably the
14 case that is most on point. However, there's no Fourth Amendment
15 argument that's addressed in Steen. And any (inaudible) of dissent even
16 points that in fact there isn't one, and if there was, then they would
17 certainly have a Fourth Amendment argument. So arguably that's not on
18 point either.

19 So as such, there are numerous other cases that are pointed
20 out that the defense does believe is on point. I don't know that the City's
21 had a chance to look at those.

22 JUDGE SMITH: Well, there's (inaudible). I think I've
23 read Steen. They submitted Steen, yeah.

1 MS. PIMENTEL: Right. I was talking about aside from
2 Steen. So the argument is that Steen isn't on point because it doesn't
3 address the Fourth Amendment issue, which is the defense's basis for the
4 argument. That under the Fourth Amendment Mr. McLemore had no
5 obligation to allow the police to enter his home, and that because of that,
6 the City can't prove that he willfully hindered the officers.

7 JUDGE SMITH: Well, if I suppress any evidence, I
8 suppress the arrest, basically of the individual. And – okay. Anything
9 additional?

10 MS. PIMENTEL: Not at this time. I guess you can hear
11 from the City and see what...

12 JUDGE SMITH: Okay. Ms. Roberts?

13 MS. ROBERTS: Your Honor, as the Court has already
14 pointed out, the issue on a Knapstad motion is look at the evidence in the
15 light most favorable to the City, and that there are no disputed facts. We
16 have a couple of theories in this case. The first – the first is which –
17 excuse me. The first relies on a very specific statement included in the
18 officer's police report, which as the Court is aware from reviewing the
19 police report (inaudible) back from this matter. The officers talk about
20 knocking on the door multiple times. They are dispatched to a
21 disturbance. They hear a female voice. She says you can't leave me out
22 here. She was shouting. She sounded under duress as described by the
23 officers. They hear her say I'm going to call the police. As time goes on

1 they're continuing to knock on the door, continuing to ask Mr. McLemore
2 to open the door.

3 But what I point out is this, a second report there. It's
4 Deputy Boyer's report and reading from his statement. No, I'm sorry,
5 Deputy Emmons, the very bottom of Deputy Emmon's officer witness
6 statement. I heard the female – or he was talking about how he was
7 conversing with Mr. McLemore through the door. Deputy Emmons states I
8 heard the male voice tell a female to tell us she was okay. The female
9 said that she was okay and that she had a baby in her arms.

10 So that statement in and of itself shows a willful, or at least
11 has enough evidence to go to the jury on a willful delay in the officer's
12 attempts to act on community caretaking and exigent circumstances. We
13 have the defendant that they can hear through the door telling a female
14 how she needs to respond to police, knowing that the police are there to
15 check on her welfare, to check on her safety after they've heard her...

16 JUDGE SMITH: Now he didn't suggest she say anything
17 about the baby in the arms and nobody knew there was a baby, right?

18 MS. ROBERTS: No. Nobody is saying – at least...

19 JUDGE SMITH: No.

20 MS. ROBERTS: ... that's certainly not the evidence that
21 we have before us.

22 JUDGE SMITH: Yeah. Okay.

1 MS. ROBERTS: But telling the female how to respond to
2 the police certainly – certainly delayed the situation there, Your Honor, in
3 that the police aren't having regular communication and now they're
4 concerned that she is being told what to do by the defendant when they're
5 already concerned about her safety.

6 Secondly, with the Steen case, Your Honor, this case is
7 directly on point. In Steen the officers are dispatched to a disturbance,
8 just as they were dispatched to a disturbance in our case. They get there.
9 They're looking around. They see a woman who's – mascara running
10 down her face, she's clearly distraught. They're continuing to investigate
11 a situation. They are knocking on the door of a trailer. They have reason
12 to believe someone is in the trailer. They're not getting any response from
13 any individual who is in that trailer, and subsequently entered the trailer
14 and then arrest the defendant and he's subsequently charged with
15 obstruction.

16 And in this case the Court of Appeals states that there was
17 certainly enough evidence to conclude that his conduct was willful in his
18 failure to open the door and put his hands up as directed by the police.
19 The police were there and that exigent circumstances and community
20 caretaking exception to the Fourth Amendment requirement, and that the
21 defendant in failing to obey with those orders that there was sufficient
22 evidence to go to the jury. Obviously the defendant was convicted. That's
23 how it got up to Division One.

1 JUDGE SMITH: Well, let me ask the City. Does the City
2 have any problem with procedurally the defense tying in the Fourth
3 Amendment argument to a Knapstad motion?

4 MS. ROBERTS: I mean Knapstad is – I do in that
5 Knapstad is – it is what it is. I mean this is the only way we can challenge
6 it at this point, or that they can challenge it at this point. The question is, is
7 there sufficient, is there some evidence to support every element of the
8 crime charged. And in this case there is sufficient evidence of his willful
9 hindering or delaying the police in their community caretaking functions.

10 JUDGE SMITH: I haven't read Judge Quinn-Brintnall's
11 dissent here yet, but the remedy would be filing a motion to suppress the
12 arrest or something like that, as opposed to a Knapstad motion?

13 MS. ROBERTS: I don't think that that is remedy. I think
14 that Knapstad is the remedy prior to going to a trier of fact.

15 MS. PIMENTEL: Which I agree with.

16 JUDGE SMITH: Okay. Okay. Well, I haven't read the
17 City's brief, nor fully the – although I saw the references from defense on
18 the Steen case and why it didn't apply to this particular fact pattern. So
19 what I'm going to do is I'm going to make a decision by next Thursday.
20 I'm doing criminal next week too. If you have any additional authority it
21 should be in by 4:30 on Monday afternoon. And I'll have a decision by this
22 time next Thursday. And sir, you don't have to be here. You have a right

1 to be here. You can be here. We'll just put it on the 2:30 calendar next
2 Thursday.

3 MS. PIMENTEL: I believe this is still set for readiness.
4 So if you would...

5 JUDGE SMITH: Yeah. You can waive your presence if
6 you wish.

7 MS. ROBERTS: Your Honor, I think we have readiness
8 Wednesday.

9 JUDGE SMITH: Oh. Well maybe I'll make the decision –
10 I'll make the decision on Wednesday.

11 MS. ROBERTS: Additional briefing still by Monday at
12 4:30 Your Honor?

13 JUDGE SMITH: Right. I've got the 3:00. Okay. Okay.

14 MS. PIMENTEL: Madam Clerk, he doesn't need to sign
15 for a new date, correct?

16 MADAM CLERK: Correct, because he has it.

17 MS. PIMENTEL: Okay.

18 JUDGE SMITH: Okay. Is that the last case?

19 (End of recorded proceedings)

20

21

22

23

1 MS. MCDONALD: I think that's certainly proper and that's
2 allowed by law, but anything further than that implores the passion of the
3 jury.

4 JUDGE ANDERSON: Any objection to that, Counsel?

5 MR. KUTZNER: No objection to that.

6 MS. MCDONALD: And the circled one?

7 MADAM CLERK: (Inaudible).

8 JUDGE ANDERSON: And do you have that WPIC
9 number of the – I think it's in...

10 MS. MCDONALD: I think it's in the first one.

11 JUDGE ANDERSON: It is one of the first WPIC's, but I
12 don't happen to have...

13 MS. MCDONALD: So are these the order that they're
14 coming in?

15 MR. KUTZNER: I mean that's how I'm making my grid.
16 I'm assuming. If not, I'll have a (inaudible) grid.

17 MS. MCDONALD: Master...

18 JUDGE ANDERSON: Number seven, lack of a search
19 warrant obtained by the deputies?

20 MS. MCDONALD: Yes Your Honor, and I identified that as
21 that was the primary crux of the motions hearing. That's already been
22 decided by the Court. And for the defense to use that as a sword, when
23 it's already been decided that it was exigent circumstances and that a

1 search warrant is needed, the City believes that that would overly
2 prejudicial to the City's case and contrary to the law of the case as it
3 stands. So we would ask the Court to preclude the defense from making
4 that argument?

5 JUDGE ANDERSON: I do – I'm reading from the order
6 signed by Judge Smith. So on August 17th, 2016, what he does say is that
7 the officers were following within the community caretaking function as an
8 exception to the warrant requirement. That's the law of this case. And so
9 that motion is granted and so you'll make sure that you'll not have any of
10 your witnesses testify to that as well. And you won't say anything about it
11 as well.

12 MR. KUTZNER: Yes Your Honor.

13 JUDGE ANDERSON: Are we ready for our jury? Can
14 you make two copies of this. Return the original to me and two copies,
15 one for each party. Thank you. All right, anything from the defense?

16 MR. KUTZNER: Nothing major, Your Honor, just to
17 exclude witnesses and prevent witnesses from discussing the case
18 amongst themselves or with any other party.

19 JUDGE ANDERSON: Okay. How long do you need for
20 voir dire?

21 MS. MCDONALD: Perhaps 20 minutes at the most.

22 MR. KUTZNER: Yeah. I'd say 25.

1 A: It's called a PTO program. I'm riding – I have a seasoned officer in my car
2 with me and we're responding to all calls and (inaudible) everything that's
3 going on in the City.

4 Q: So a two man car essentially?

5 A: Yes.

6 Q: And what phase of your training were you in?

7 A: It's called the C segment. So I had been with two other deputies prior to
8 that and this was the third one.

9 Q: Okay. So are you primarily on your own at this juncture with just a
10 shadow, or how does that work?

11 A: He was in the car with me. But right now I'm over in Fall City by myself
12 just driving around and going to whatever comes up. At the time, he was
13 with me. We went to every call pretty much that happened in Shoreline.

14 Q: And do you recall what your shift was and what your duties were for that
15 particular...

16 A: 8 p.m. to 6 a.m. The overnight shift, just kind of responding to calls,
17 finding stuff going on, making sure people are staying safe and obeying
18 the law.

19 Q: Do you recall being dispatched at about 1:45, 2:00 in the morning, being
20 dispatched to the Arabella Apartments or there nearby?

21 A: It wasn't the Arabella Apartments. It was nearby that area. We were
22 advised of a disturbance in the area. A male was walking down the street

1 and he had heard screaming coming from the – a loud verbal argument
2 coming from a certain direction.

3 Q: And when you received that dispatch, what did you do?

4 A: We were right down the street. We drove straight there. I exited my
5 vehicle when I saw the male walking down the street. He said he had
6 called in and reported that he had heard a bunch of screaming and
7 pointed just south of where he was. And so I walked in that direction and
8 started hearing a woman screaming.

9 Q: Who was the other deputy in the car with you that night?

10 A: Deputy Ben Emmons.

11 Q: And how far away did you have to walk away from where you stopped
12 your patrol car to get to the screaming?

13 A: Less than a block.

14 Q: And what was it that you heard, if you could describe that for the jury
15 please?

16 A: I heard – it sounded like it was coming from outside. It wasn't like muffled
17 from walls or anything, or anything along those lines. I heard a woman
18 yelling, sounded in duress. She said three things specifically. I had them
19 quoted in my report. But they're things along the lines of, you can't leave
20 me out here. I'm going to call 911 or call the police, one of those two.
21 And then she also said something along the lines of I'm reconsidering our
22 relationship.

23 Q: Okay. And did you write a report for this incident?

1 A: And I always, whenever I'm talking in quotes I always like to make sure I
2 am getting it right. So that's why I was just generalizing at the time. But
3 what I had written down before was I heard her say you can't leave me out
4 here and I'm going to call the police. And then the third one was
5 something along the lines of I'm reconsidering our relationship.

6 Q: And how would you describe the tone of that voice and perhaps the – how
7 loud that voice was?

8 A: It was very loud. It was like about 1:30 in the morning. There were no
9 other noises coming from down that street. There's a bar across the
10 street, but I think that was closing. I didn't hear anything from there.
11 There was no other noises in the area. And it was very distinct and very
12 loud. There was a, I think, a townhouse unit just south of there. Definitely
13 probably the neighbors started hearing that (inaudible) (inaudible).

14 Q: And could you tell the demeanor of that particular person based upon how
15 you were hearing her voice?

16 A: She sounded in duress, upset. Yeah, it was very loud yelling.

17 Q: Could you, from your vantage point at this point, as you're hearing this, as
18 you're coming up on the scene, could you see the person making those
19 statements?

20 A: No I could not. We took a few seconds to figure out where it was coming
21 from. Just to the south of the building that we were going at is a
22 townhouse unit. And we were trying to figure out where it was coming
23 from because there's high walls and things coming off. The apartment in

1 question is located directly above the dry cleaners there and I was
2 unaware that there was even an apartment up there. I kind of started
3 trying to narrow it down as we walked around the perimeter of the building
4 and noticed that there was a balcony on the second story where the
5 apartment was and it appeared to be coming from that location, but I was
6 never able to see anybody up there.

7 Q: So you couldn't see onto the balcony from where you're at?

8 A: No. It was a second story and it was – the roadway kind of comes down a
9 little bit so there was no high spots to really look up there or vantage
10 points to see in.

11 Q: Were you still able to hear the yelling as you were approaching and trying
12 to narrow in on this?

13 A: The yelling continued as we were all surveilling the property and
14 everything, walking around. It was myself, Deputy Dallan and Deputy
15 Emmons that were on the scene at the time.

16 Q: And could you hear the types of things that were being argued about?

17 A: Not specifically. It was just those three statements and just other yelling
18 as we were kind of continuing around.

19 MS. MCDONALD: Your Honor, may I approach the
20 witness?

21 JUDGE ANDERSON: Yes.

22 MS. MCDONALD: Thank you.

1 Q: Once you were able to pinpoint where the parties were involved in this
2 argument, where that was coming from, what did you do next?

3 A: We located the front door to the place which was on the – if you're looking
4 at the house from the street it was on that side of the street. There was a
5 door to the left of the thing, because there was the laundromat which is all
6 on the right side, and then there's just this one door off to the left side,
7 which was the only entrance that we were able to locate for the apartment.
8 It had numbers on it. We began – I went over to the front door and started
9 knocking and announcing my presence as law enforcement.

10 Q: And how did you do that? What kind of steps do you do to make sure that
11 the individuals know that you are law enforcement?

12 A: I knocked – I don't like to go in too aggressive from the start. I knocked,
13 said Shoreline police and got no response.

14 Q: What happened when you knocked on the door?

15 A: As soon as I started knocking the argument ceased and we never heard
16 any voices, or we weren't hearing any voices past that.

17 Q: And from a law enforcement officer's perspective, based upon your
18 training and experience, what can and does that mean to you?

19 A: We're kind of trained to anticipate the worst and plan for the worst.
20 There's a number of things that went through my mind at that point. It
21 could be all the way down to they just stopped fighting because they
22 realized that the police were there, or that the woman was hurt.

1 Q: Could you **see** into the apartment from that door? Were there any
2 windows in the door?

3 A: No. That door was a very thick, solid, wooden door and there were no
4 side windows to it.

5 Q: So no vantage point into the – you couldn't tell if there was – or how many
6 people were inside the apartment?

7 A: No. We were working on complete blindness. The only thing we all saw
8 was just the balcony and the door.

9 Q: Did you know if anyone inside was armed?

10 A: No. No idea whatsoever.

11 Q: And when you said that you heard voices arguing obviously you described
12 a female voice. How would you describe the other voice?

13 A: I don't recall specifically. The female's yelling and screaming was my
14 main concern. That's what I remember most.

15 Q: Could you tell if it was a male or female voice that was the second voice?

16 A: I believe I remember hearing a male's voice because we were trying to
17 contact a male. But I don't remember off the top of my head.

18 Q: Now when you knocked on the door, how hard would you say you
19 knocked on it?

20 A: I initiated it with just loud knocking, but not banging or anything along
21 those lines. And then it escalated up to banging and then shouting
22 Shoreline Police, you need to come to the door, those kinds of comments.

1 Q: How long did you spend knocking on the door and trying to get the
2 occupants' attention?

3 A: I personally was there about eight minutes, banging and yelling on the
4 door. I was not being subtle about it. I was being as loud as possible to
5 make sure, because I knew they were more likely upstairs, a distance
6 away. So I continued to knock and bang.

7 Q: And did you ever get any response from inside?

8 A: Not a word. Not a sound after I started knocking.

9 Q: And what happened next between you and the other deputies there on the
10 scene? How did you decide to proceed next?

11 A: We attempted to get our dispatch and I think one of us checked as well,
12 tried to get a phone number inside to see if we could call in. No one was
13 able to locate a number for the house. Deputy Emmons brought the patrol
14 car over, parked it pretty much from the vantage point of the picture that
15 was just passed around, shined the spotlight up to the balcony and used
16 the public address system to say Shoreline Police, you need to come to
17 the door. You need to come to the door, otherwise we're going to – and
18 we threatened to break down the door if he didn't comply. Still, no
19 response.

20 Q: And how long did that go on for?

21 A: Another eight minutes approximately. I was basing that on the CAD logs
22 that I was reviewing afterwards. The dispatch gives logs. We were

1 updating the dispatch constantly of what was going on with our portable
2 radios.

3 Q: And could you hear anyone moving around inside or talking inside or
4 anything of that nature?

5 A: I did not hear any talking or any movement whatsoever inside.

6 Q: What, if anything, was the next thing you heard?

7 A: After about eight minutes of using the public address system, I heard
8 Deputy Emmons saying this is the Shoreline Police, you need to come to
9 the door. There was a brief pause and then I heard the distinct sound of
10 glass shattering.

11 Q: And – coming from inside the apartment?

12 A: Coming from the balcony area. It was definitely coming from that building
13 though.

14 Q: Do you know what – at that moment did you know what had caused that
15 glass to shatter?

16 A: I could not see any windows from my vantage point and I didn't see – I
17 wasn't able to see what was going on.

18 Q: What was your concern based on your training and experience at this
19 juncture?

20 A: Like I said earlier, we anticipate to think the worst and hope for the best.
21 It's – all I could picture at that time was a woman's head being thrown
22 through a window, something along those lines.

23 MR. KUTZNER: Objection, Your Honor.

- 1 JUDGE ANDERSON: Sustained. And let me just
2 instruct the jury to disregard that last statement about what he thought or
3 what his speculation was.
- 4 Q: Did you know at that juncture if anyone else had been injured?
- 5 A: No.
- 6 Q: Did you have concern that there may be someone injured inside?
- 7 A: Yes.
- 8 Q: Does that change the way, based upon your training, and based upon
9 your experience, does that change the way that you respond to these
10 situations or how you proceed in these situations?
- 11 A: Yes.
- 12 Q: And how does it change that and what does it change (inaudible)?
- 13 A: That becomes to exigent circumstances – exigent circumstances, excuse
14 me. The likelihood or the possibility of someone being hurt just increased
15 a high amount. It went from no noise to – but not common generally bad
16 noise, and I told my partners and we made the decision right then and
17 there very quickly that we needed to break down that door and get in there
18 to make sure everything was okay.
- 19 Q: Was that the only time you heard glass break?
- 20 A: There was the first shatter and then I notified my partners and then I
21 notified the dispatch. And the about 40 seconds later I heard another
22 glass shattering or falling, something along those lines.

1 Q: And could you see, from the vantage point in the street, did anyone go out
2 and look up and see if they could see what the cause of that glass
3 breaking was?

4 A: There was no logical spots that we could get a better vantage point.
5 There was no spot that gave us any kind of view inside.

6 Q: Now once you heard all of this did you then step up your efforts to try to
7 contact the persons inside?

8 A: Yes. I stayed on the back side of the property to kind of be a perimeter
9 just in case anyone tried to run off the balcony, jump off the balcony or
10 anything along those lines. Deputy Emmons and Deputy Dallan contacted
11 the front door and began kicking it and yelling, opening the door. And
12 then we also called for the fire department to bring larger tools like axes to
13 break down the door.

14 Q: And did they respond with those tools?

15 A: They did.

16 Q: And did you ever get any response from inside the house?

17 A: I was on the back side. I could hear the yelling. What I understood was
18 that Dispatch had a line inside of someone talking on the phone. But I
19 wasn't on the phone so I didn't hear any distinct stuff. I heard them yelling
20 through the door, but that's – I couldn't understand what was being said as
21 I was on the back side of the property.

22 Q: So you had left your station at the door at that point?

1 A: Yeah. While the PA system was being yelled, I was kind of at the back of
2 the property. I wasn't at the front door the whole time. I heard the glass
3 shattering when I was next to the patrol car in the back. And then I took
4 my post on the back side of the house just to make sure no one was
5 running.

6 Q: Do you know if they were ever able to get through that door and contact
7 the occupants?

8 A: They did. It took a little bit of time. The door was a very thick door. It
9 opened outwards. So like normally you can kick a door through. But
10 since it opened outwards it kind of added the extra security to it to make it
11 much harder. They did eventually break down that door, open it up and
12 take the male in custody.

13 Q: And were you a part of that operation or were you still on the perimeter?

14 A: I was still on the perimeter until told to come upstairs.

15 Q: When eventually you did come upstairs, did you have any contact with any
16 of the occupants of the home?

17 A: The gentleman was being taken out to the car and I was still back at my
18 car. I had -- someone brought the female out to my car with me and I
19 spoke to her at my car.

20 Q: What was her demeanor like when you spoke with her?

21 A: She was upset but didn't appear hurt or anything along those lines?

22 Q: How many occupants of the house were there?

23 A: There was the male, female and then a seven month old child.

1 A: She signed the document stating she was uninjured, but stated she did
2 not want to provide – or stated she did not want to provide a statement
3 and signed to that effect. A written statement, sorry.

4 Q: When you interacted with her did she exhibit any outward signs of – you
5 said there were certainly no injuries, but any signs of crying or anything of
6 that nature?

7 A: She was upset. But that could go along with police coming through your
8 door and right after having an argument. But she didn't – she was
9 distraught a little bit and then she was – the fact that the front door was
10 now broken, she gathered up her child and went to her mother's house.

11 MS. MCDONALD: I don't have any further questions for
12 this – at this time.

13 JUDGE ANDERSON: Okay. Mr. Kutzner, do you have
14 any questions on cross?

15 MR. KUTZNER: I do.

16 JUDGE ANDERSON: Go ahead.

17

18 CROSS-EXAMINATION

19 (BY MR. KUTZNER)

20 Q: Good afternoon, sir.

21 A: Good afternoon.

22 Q: Why was Mr. McLemore arrested?

23 A: Obstruction.

1 response it became louder and louder, open the door, police, come to the
2 door now.

3 Q: Was there ever any profane language used?

4 A: I didn't. I don't know if the other deputies did.

5 Q: You've indicated that you've had some extensive officer training, correct?

6 A: Well, yeah. I mean I've gone through the training that officers go through.

7 Q: Okay. And you also understand and are familiar with the exigent
8 circumstances exception?

9 A: Yes.

10 Q: Does it say anywhere in that exception that Mr. McLemore has a duty to
11 assist you in your police duties?

12 MS. MCDONALD: Objection Your Honor. That calls for a
13 legal conclusion and...

14 JUDGE ANDERSON: Sustained.

15 MR. KUTZNER: Sorry Your Honor. I have no other
16 questions at this time.

17 DEPUTY BOYER: Okay.

18 JUDGE ANDERSON: Anything on cross – I mean sorry.
19 Sorry. Redirect?

20 MS. MCDONALD: Not based on upon that cross-
21 examination.

22 JUDGE ANDERSON: Okay. You can step down. Do
23 either of the parties expect to recall this witness?

- 1 A: About two years.
- 2 Q: And what sort of training did you receive in order to become a law
3 enforcement officer?
- 4 A: I went through the six month police academy down in Burien and then
5 following that about six more months of on the job training with King
6 County.
- 7 Q: And what are your duties here with King County?
- 8 A: Patrol. So respond to 911 calls.
- 9 Q: And what was your shift back in March of this year?
- 10 A: The graveyard shift, which is 8 p.m. to 6 a.m.
- 11 Q: Now in March of this year were you on your own or were you in any kind
12 of a training program?
- 13 A: No. I was on my own.
- 14 Q: So you had gotten past all the training and all of the qualifications at that
15 juncture?
- 16 A: Yes.
- 17 Q: And do you recall being on duty on March 1st?
- 18 A: I do.
- 19 Q: And do you recall at around 1:45 – between 1:45 and 2:00 in the morning
20 being dispatched to the defendant's residence for a disturbance?
- 21 A: Yes.
- 22 Q: And can you please tell the jury what kind of disturbance that you were
23 being dispatched to as far as you became aware?

- 1 A: I don't remember the exact details but it was a disturbance between a man
2 and a woman, some type of arguing. So some type of potential domestic
3 situation.
- 4 Q: And did you respond?
- 5 A: Yes.
- 6 Q: And were in a single car or a double car?
- 7 A: I was in a single car.
- 8 Q: And where did you respond to?
- 9 A: About the 17700 block of 15th Avenue Northeast.
- 10 Q: Is that within the City of Shoreline?
- 11 A: Yes.
- 12 Q: And when you arrived what did you see?
- 13 A: So when we arrived we didn't have an exact location. We were just
14 described that somebody could hear arguing and some type of
15 disturbance. So we arrived in the area to try to locate the disturbance.
16 Deputy Emmons and Deputy Boyer had gotten there just before me and
17 they told me that they ran into somebody, I believe it was the person who
18 had called, who pointed out the area (inaudible) from where he heard the
19 argument from. And it was – the front of the building was a laundromat
20 and it looked like there was some type of apartment above it. When we
21 got in the area we started hearing arguing.
- 22 Q: Could you hear the male voice and the female voice?
- 23 A: I (inaudible) hear a male and female voice.

1 A: I don't remember exactly, but somewhere near here. My car was probably
2 at some business nearby. Because we got on foot so we could see what
3 was going on.

4 Q: So did all officers park away from the residence?

5 A: No. Deputy Boyer and Emmons, who at the time were in the same car,
6 their car was initially somewhere around here. And then later on the car –
7 they brought the car back

8 Q: Okay. Can you mark where it was initially parked?

9 A: Somewhere around here.

10 Q: All right. When you arrived on scene and you said you were able to locate
11 where the argument was coming from, the apartment the argument was
12 coming from, where did you go?

13 A: So initially we all came back here and could hear arguing. And then I
14 remember everything that was said, but things along the lines of – I could
15 hear the female saying I'm going to call 911, or I want to call 911 or the
16 police, something to that extent. And so we decided we were going to go
17 knock on the front door to try and get them to come to the door so we
18 could see what was going on.

19 Q: Thank you. You can have a seat.

20 MS. MCDONALD: And Your Honor, I'm going to ask that
21 that be marked as Plaintiff's exhibit seven as demonstrative evidence, and
22 offer that.

1 JUDGE ANDERSON: You're going to offer that into
2 evidence?

3 MS. MCDONALD: As demonstrative evidence.

4 JUDGE ANDERSON: It's going to be for illustrative
5 purposes only.

6 MS. MCDONALD: Thank you.

7 JUDGE ANDERSON: It's marked. It's not admitted into
8 evidence. It's not going back to the jury.

9 Q: All right. And so you hear the arguing, you hear her say I want to call 911
10 or something along those lines. I'm calling the police. Do you all three go
11 to the door?

12 A: Initially I don't recall. There was some shuffling going on as we were
13 trying to keep tabs on what was going on. I know at various points we
14 were all three at the door.

15 Q: Where did you go?

16 A: I went to the front door.

17 Q: And then when you went to the front door what did you do?

18 A: We knocked on the front door.

19 Q: Who was there with you? Do you recall at that point?

20 A: At that point it may have been the three of us. I'm not positive as to who
21 was all there at that time. But because of the buildings that were going
22 on, we could still hear echoing or arguing. And then when we knocked on
23 the door everything went quiet immediately.

1 A: Quite some time. We knocked for a long time, yelling, announcing
2 ourselves. Eventually Deputy Emmons pulled his car to position it
3 (inaudible). Then he got onto the loudspeaker and identified himself as –
4 you know, this is Shoreline Police, open the door, things of that nature.
5 We need to make sure everybody is okay. Call 911 to make sure we're
6 the police, those kinds of things. This is a long time, minutes – minutes of
7 this. I didn't have a stopwatch, but it was quite some time. And then by
8 that point we had kind of spread out. Deputy Emmons was at the car. I'm
9 still at the front door, still knocking, trying to get anybody to come to the
10 door. Deputy Boyer kept going back to the balcony to see if he could see
11 anything. But as we continued to do this for minutes, at some point
12 Deputy Boyer advised that he heard glass breaking twice.

13 Q: And again, based upon your training and responding to these types of
14 situations what are you trained to interpret that as or (inaudible)...

15 A: At that point...

16 MR. KUTZNER: Objection, possible speculation.

17 JUDGE ANDERSON: Go ahead and answer.

18 A: At that point it was – we were already concerned over the situation. At
19 that point it became an immediate need for us to get inside to see what
20 was going on because we feared the safety of everyone involved.

21 Q: Did you know how many people were involved at that point?

- 1 A: I mean I'd have to guess six to ten minutes. When we started getting
2 responses Deputy Emmons tried to kick the door, but we realized it was --
3 kick the door in, but the door opened out. So it was not going to work. So
4 I had a little pickaxe in my car. We had asked the fire department to come
5 with breaching tools, but because we were very concerned with what was
6 going on in the home I started trying to break the lock off the door to get
7 in. And as I was doing that, that is when I finally made contact with the
8 male through the door.
- 9 Q: Describe that contact.
- 10 A: The conversation was a little bit repetitive. We're the police, you need to
11 let us in. The male kept saying I don't have to let you in. I don't know who
12 you are, things of that nature. At this point Deputy Emmons is at the door
13 with me. And we're telling him, you need to let us in. You can call the
14 police, 911. They'll tell you that we're the police, let us in.
- 15 Q: Were you dressed -- how were you dressed?
- 16 A: I was dressed just like this.
- 17 Q: Full uniform?
- 18 A: Full uniform with these markings, radio, (inaudible).
- 19 Q: And the car, were those fully marked patrol cars?
- 20 A: Yes.
- 21 Q: And were those, at least to the extent of Deputy Emmons and their patrol
22 vehicle, was that in a visible point to the balcony?

- 1 A: If someone walked out on the balcony they would have been able to see.
2 If they were to walk to the edge of the balcony they could have seen that
3 car.
- 4 Q: Okay. And were there lights activated at all at that point or solely
5 (inaudible)?
- 6 A: I don't recall.
- 7 Q: But anyways, you announced yourself and verbally told this individual that
8 you were the police?
- 9 A: Yes.
- 10 Q: And could you hear him through the door?
- 11 A: Yes.
- 12 Q: And could you tell if he could hear you through the door?
- 13 A: He was responding to what we were saying.
- 14 Q: At any point did he open the door? Was the door cracked or was it still
15 shut?
- 16 A: It was still shut.
- 17 Q: Describe kind of an ongoing conversation with him or anything that you
18 were hearing the defendant saying through that door.
- 19 A: So as we continued kind of in this repetitive loop of conversation, at some
20 point a female comes to the door and he said tell them you're okay. We
21 had been telling him we need to make sure that everyone is okay. We
22 need to know that everyone is okay because of what is going on here. So
23 the female at some point comes to the door and he says, tell them you're

1 okay. The female said I'm okay. At this point they both said something
2 like we're scared or something of that nature. But we tell them, we can't
3 just take your word for it. You telling her to tell us you're okay isn't enough
4 for us to verify that you're okay. He could be forcing you to say this. We
5 have no idea. You're behind a door and we have no idea what's going on.
6 We need to investigate.

7 Q: And are you trained to simply take someone's word for it if they tell you
8 they're okay?

9 A: No.

10 Q: Why is that?

11 A: Because of a myriad of reasons. People lie. They could be under arrest,
12 all kinds of situations. And so we have the legal obligation to investigate
13 to make sure that someone who needs help isn't being prevented from
14 getting help because of various reasons.

15 Q: And when she – when you heard him say tell them you're okay and she
16 responded what was the tone of her voice?

17 A: It was – I mean it sounded like she had been crying. Again, it didn't sound
18 like a calm, normal individual.

19 Q: And did that concern you as an investigating officer?

20 A: Very much so. Him saying tell them you're okay seemed very coercive.

21 Q: Very coercive? Did the defendant, when you were there, make any
22 attempts to open the door and let you in?

23 A: No.

1 Q: What had happen – what would happened if he had let you in?

2 A: We would have investigated. We would have separated the parties and
3 went through the evidence and got the different stories to figure out what
4 happened.

5 Q: And were you able to do that in any kind of a timely manner?

6 A: In that fashion, no. What eventually ended up happening is that the fire
7 department showed up with tools that allowed us to break the door open
8 at which point we were able to make entry.

9 Q: So at the point where you are making entry into this house, I want to make
10 sure my math's right. You've got three officers on scene?

11 A: When we were actually making entry other officers showed up to the
12 scene. Because whenever we are going to break a door we notify our
13 sergeant. So at some point he showed up to the scene as well as another
14 deputy, but I don't recall exactly. It was near the end of this that the other
15 deputy showed up. I don't recall exactly when.

16 Q: Okay. So several deputies on the scene, at least three, possibly more
17 than that, plus the fire department and their resources in terms of their
18 tools?

19 A: Yes.

20 Q: When you told the defendant to open the door, what did he say in
21 response to you?

22 A: Things like I don't have to. You know, police, you're violating my rights,
23 things of that nature.

1 A: I would say there would be a difference in that.

2 Q: And did you command the defendant to open the door and allow you to
3 come in and investigate?

4 A: Yeah. We said we were the police and you need to open the door,
5 multiple...

6 Q: And did he ever comply with any of those commands?

7 A: No.

8 Q: And his non-compliance with those commands, did that impact your ability
9 to effectively do your duties?

10 A: Yes.

11 MS. MCDONALD: Anything else on re-re-re-cross?

12 MR. KUTZNER: Nothing further, Your Honor, thank you.

13 JUDGE ANDERSON: All right. You can step down, sir.

14 Thank you very much for your time.

15 DEPUTY DALLON: Thank you Your Honor.

16 JUDGE ANDERSON: I'm not going to release him
17 completely from his subpoena right now because you may have him called
18 back.

19 MS. MCDONALD: Depending on who else testifies.

20 JUDGE ANDERSON: Thank you.

21 MS. MCDONALD: So excusal for the day is probably safe.

22 JUDGE ANDERSON: Are you ready for your next
23 witness?

- 1 Q: Okay. All right. Now do you recall also on March 1st being dispatched to a
2 disturbance here in the city of Shoreline?
- 3 A: I do.
- 4 Q: At about 1:45, or 2:00 in the morning?
- 5 A: Correct.
- 6 Q: Now when you're dispatched to this, what kind of information do you get?
- 7 A: We just get the information that the reporting party is giving to our
8 dispatcher. So if somebody calls in with a problem and we're given that
9 information third party then.
- 10 Q: And in this case do you know who the reporting party was and what
11 information was imparted to Dispatch?
- 12 A: If I remember correctly off the top of my head it was Mr. Alvarado –
13 (inaudible) Alvarado. I'm not totally sure about that. Anyway, he was
14 saying that he heard some kind of disturbance in the neighborhood.
- 15 Q: Okay. And did you respond when you got that information?
- 16 A: We did.
- 17 Q: And did you get any kind of a description? Was this a disturbance
18 between two males, two females, male/female, anything like that?
- 19 A: I don't remember specifics. All I know is that he heard a disturbance in the
20 neighborhood.
- 21 Q: Okay. When you responded to this, how did you respond to this and what
22 kind of tactics did you take when you're coming to something like this
23 where you don't have a lot of that information?

1 A: I did. At first I was kind of confused because I figured the disturbance
2 would be happening to the north side because there were apartments
3 there. I wasn't aware that there was an apartment complex there at the
4 drycleaners. And so we walked that direction and we could hear the
5 sound of a female yelling. I could hear a muted male in the background
6 and we just tried to ascertain exactly where it was coming from. It was a
7 dark night, kind of misty. Things were a little bit echoing.

8 Q: Okay. The female's voice was much clearer than the male's voice?

9 A: Correct.

10 Q: Could you hear what the female was saying, if anything?

11 A: I did. I noted it exactly in my report what I believe I heard. But she said
12 that she wanted to call 911, she wanted out of the relationship and she
13 wanted to leave.

14 Q: And as an officer who's responding to a potential disturbance, what did
15 that mean to you?

16 A: Well, I'm increasingly worried at that point. There's obviously a conflict
17 between two people. Somebody wants to leave and they're not being
18 allowed to do so. They want to call 911 and they're not being allowed to
19 do so. So obviously I want to investigate that and see if their safety is in
20 question.

21 Q: Okay. And so were you able to ascertain exactly where those voices were
22 coming from?

1 A: We were. At the particular time we had to go back to the back of the
2 building which is bordered by another apartment building to the south and
3 then around to the front of the street. But we finally figured out it was
4 coming from up on top of the drycleaners.

5 Q: Okay. Now we have Plaintiff's exhibit number seven, a demonstrative
6 exhibit here. Does that look about the right layout there?

7 A: Sure.

8 Q: Okay. And when you were able to ascertain where the yelling was coming
9 from could you see the parties from your vantage point from the street?

10 A: I could not.

11 Q: Okay. Only the voices?

12 A: Yes.

13 Q: And what did you do when you started to – when you heard that female
14 voice saying that she wanted to leave and wanted to call 911?

15 A: So we realized that there was an issue and we were in the right place for
16 the call. So we went around to the front of the apartment building and
17 found out exactly where the door was at, and started knocking on the
18 door, loudly.

19 Q: And when you knocked on the door did you make any other
20 announcements or any other statements?

21 A: Yeah, absolutely. I pounded on the door and it was solid. It was a solid
22 wood door with hinges on the outside that was encased in a brick or
23 masonry type frame. I saw when I pounded on the door that the door

- 1 A: He tells me to go away and says I'm violating his civil rights, that I have no
2 right to come inside. I inform him that was not correct. I do have the right
3 to come inside. I told him why we were doing so.
- 4 Q: And what did you tell him in terms of why?
- 5 A: I told him we fear about the people's safety inside. If everybody comes to
6 the door and opens the door and get inside and talk to people, then we
7 can sort things out that way. If he doesn't, we will continue doing as we're
8 doing and we will come inside.
- 9 Q: Okay. And did he comply with your commands to come outside?
- 10 A: He did not. He did not.
- 11 Q: Did he comply with your command to open the door?
- 12 A: He did not.
- 13 Q: Did he make any statements to you that led you to believe that he was not
14 going to do either one of those?
- 15 A: Yes. He said that he was going to sue us and he walked away. And I
16 don't remember if I knew there were stairs then, but he walked away from
17 viewpoint and that small little hole we had in the door.
- 18 Q: So you were able to have some visual inside the apartment to see at least
19 him?
- 20 A: Correct.
- 21 Q: Could you see the rest of the apartment to see if there were any other
22 injured individuals or the female? Did you ever see her?

1 (BY MR. KUTZNER)

2 Q: Just once again, what was Mr. McLemore arrested for?

3 A: Obstruction, sir.

4 Q: Was he arrested for any type of domestic violence charge?

5 A: He was not.

6 Q: Okay. You indicated that you arrived on the scene and then there was no
7 response at the door and so then you decided to get on a PA system.

8 What was your demeanor when you were on that PA system?

9 A: Just very matter of fact. The same discussion and voices that we're
10 having now.

11 Q: Okay.

12 A: This is the Shoreline Police Department. We want to talk to you. This is
13 why we're here. Call 911. Lean over the balcony and talk to us. Very
14 matter of fact, very conversational.

15 Q: Okay.

16 A: I wasn't yelling, except for the fact that my voice is being amplified by the
17 PA.

18 Q: Understand. Did you use profane language in your attempted
19 communication?

20 A: Over the PA? No.

21 Q: Okay. Did you hear the glass break from your position?

22 A: I did not hear the glass break. Deputy Boyer heard the glass break.

1 Q: Okay. I believe you said you couldn't recall if she was holding the child or
2 not holding a child?

3 A: When I referenced my report the last time, I did say that I saw her holding
4 a child.

5 Q: Okay. Okay. You contacted the female. You indicated that she was
6 calm. Did she say anything to the effect of being frightened before that by
7 your presence and what took place?

8 A: I do believe that it came from her when she said she was worried if they
9 opened the door and spoke to us that somebody would be arrested.

10 Q: Okay. And then when you guys made entry was there – could you see
11 clearly into the apartment then?

12 A: I could not. So when you open up this bottom door which we breached, it
13 was a stairway that goes up a story.

14 Q: And then the apartment...

15 A: Well, it's not wide open. You have to make a right. It's off to the right. So
16 you go up, make a right and then you have the apartment.

17 Q: Is there a second door at the top?

18 A: There's a balcony.

19 Q: Is there a second door into the actual apartment itself?

20 A: I don't recall.

21 Q: At the bottom of the stairs where the first door was, was there any material
22 that was piled up against the door, were there any other bars against the
23 door or any other obstructing material?

1 A: I go down the stairs. My lady is right behind me with our son at this point,
2 I'm not sure. I said hey, what's going on. What are you guys doing? You
3 need to stop. You need to please stop and go away. They said we're
4 coming in. We need to come in. We need to make sure everybody is
5 okay. And I asked them all the relevant questions as to why – legal entry.
6 Do you have anything to show me that shows me you can come in?

7 MS. MCDONALD: Your Honor, I'm going to object again.
8 This is regarding the earlier motions.

9 MR. KUTZNER: That's okay, Mr. McLemore.

10 MR. MCLEMORE: Sorry. Sorry.

11 Q: Proceed please.

12 A: They told me they didn't have to, to us. And I say me again because I'm
13 representing my family. I'm representing my woman, who is scared, and
14 my child. And so it's me. They tell me they don't have to. They don't
15 need to show me anything to get in. And then I tell them, well then in that
16 case you need to go away. Thank you very much. No one here called
17 you. No one here asked for your help. Please leave us alone. We tried
18 to just be quiet. We were already quiet. The argument was over. It
19 proceeded into people banging, and kicking and now there's damage on
20 the door from one side, I can tell. You can tell that this isn't going back.
21 There's no turning this back. And it's forward. It's going forward on their
22 behalf. They're coming in. So I tell him. I said look man, you are violating
23 my civil rights. I said I have rights. My lady has rights. He says, yes you

1 do have rights. I said well, then will you please go away. He said well
2 look, man.

3 JUDGE ANDERSON: And then can we have a question
4 in front of your witness?

5 MS. MCDONALD: Yes Your Honor.

6 MR. KUTZNER: Sorry. I'm sorry.

7 Q: So after that first initial exchange how did that make you feel when he said
8 he wouldn't go away?

9 A: It confused me. I was confused because he just told me that I had civil
10 rights. He confirmed that when I said that. I thought I was acting on my
11 Fourth Amendment, you know, the right to stand by...

12 MS. MCDONALD: Your Honor, again I'm going to object as
13 this is in violation of the motions.

14 JUDGE ANDERSON: Yeah. Strike the reference to the
15 Fourth Amendment and don't consider that in your deliberations. Or, if
16 you've put it in your notes, strike that out of your notes as well.

17 Q: You were describing how you felt when they were saying (inaudible) go
18 away.

19 A: I was already scared. I was already scared from the threats upstairs over
20 the PA. It wasn't nice. I was appalled. I felt this was very unprofessional
21 and what they had to do, what they wanted to do when they got in was not
22 going to be good.

23 Q: Okay. So did you do anything at that point?

1 MS. MCDONALD: I'm showing the third video because
2 that's the one that has any kind of length to it. Some of the other ones
3 overlap.

4 MR. KUTZNER: Yes. But then I think to be complete
5 and accurate...

6 JUDGE ANDERSON: So...

7 MS. MCDONALD: You can do that on – this is my
8 (inaudible) on cross-examination.

9 (Multiple conversations take place)

10 (Court is in recess)

11 JUDGE ANDERSON: The only thing that you can
12 exclude is that they don't need a search warrant.

13 (Parties review video)

14 MS. MCDONALD: Right.

15 JUDGE ANDERSON: Or that they need a search
16 warrant.

17 MS. MCDONALD: That's the very first thing that's said.

18 JUDGE ANDERSON: Where is that starting?

19 MR. KUTZNER: My apologies. I was wrong.

20 JUDGE ANDERSON: So where is that starting?

21 MS. MCDONALD: That was right at the very beginning.

22 JUDGE ANDERSON: (Inaudible) search warrant and
23 then I will pause it.

1 Q: And if everything was okay with your son?

2 A: Yes.

3 Q: Okay. And they also checked the rest of the residence to make sure
4 nobody else was inside?

5 A: Yes, they searched our apartment, yes.

6 Q: And how many times do you recall the officers telling the defendant to
7 open the door or to come outside?

8 A: I don't recall.

9 Q: More than once or twice?

10 A: Yes.

11 Q: Multiple times?

12 A: Yes.

13 Q: Okay. Do you recall them giving options such as, hey call 911, we can
14 talk that way?

15 A: We did call 911.

16 Q: Okay. You did?

17 A: Yes we did.

18 Q: And did you speak to 911 or did he?

19 A: He spoke to 911.

20 Q: He did?

21 A: Yes.

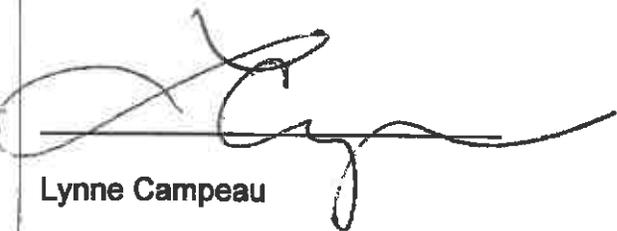
22 Q: And he testified that he did not call 911.

23 MR. MCLEMORE: No, I just (inaudible).

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I, Lynne Campeau, certify under penalty of perjury, of the laws of the State of Washington, that the following is true and correct to the best of my skill and ability.

DATED this 27th day of February, 2017 in Federal Way, Washington.


Lynne Campeau

No. 77094-2 I

COURT OF APPEALS, DIVISION I
OF THE STATE OF WASHINGTON

SOLOMON MCLEMORE,

Petitioners/Defendants

v.

CITY OF SHORELINE,

Respondent/Plaintiff

MOTION FOR DISCRETIONARY REVIEW

Appendix 3

FILED

MAR - 1 2016

KCDD - West Division
Shoreline Courthouse

IN THE KING COUNTY DISTRICT COURT
WEST DIVISION

CITY OF SHORELINE,)	
)	
Plaintiff,)	NO. 616010940
)	
vs.)	COMPLAINT
)	OBSTRUCTING A LAW
SOLOMON MCLEMORE,)	ENFORCEMENT OFFICER
)	
Defendant.)	

The above-named defendant is hereby accused of the crime of obstructing a public servant; committed as follows:

That the defendant in the City of Shoreline, Washington, King County, on or about 3-1-16,

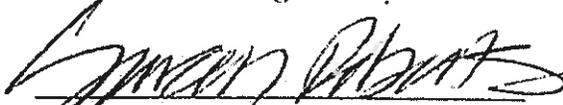
- Willfully hindered, delayed, or obstructed any law enforcement officer in the discharge of the law enforcement officer's official powers or duties; and
- Knew that the law enforcement officer was discharging official duties at the time;

Contrary to SMC and adopting by reference RCW 9A.76.020, and against the peace and dignity of the State of Washington.

DATED: 3-1-16

Shoreline Prosecuting Attorney's Office

By:



Sarah Roberts
WSBA #22499
Prosecuting Attorney

The above-signed prosecutor does certify, under penalty of perjury, that she/he has reasonable grounds to believe, and does believe, that the defendant committed the offense, contrary to law.

No. 77094-2 *I*

COURT OF APPEALS, DIVISION I
OF THE STATE OF WASHINGTON

SOLOMON MCLEMORE,

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v.

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Respondent/Plaintiff

MOTION FOR DISCRETIONARY REVIEW

Appendix 4

COTT VS McLEMORE

CASE #
616010940

CT FINDS BASED ON UNDISPUTED FACTS AND CASE

OF ST V STEEN 164 WU Op 789 THAT THE

KNAPSTAD MOTION IS HEREBY DENIED

FACTS CONSIDERED MOST FAVORABLY TO THE NON-

MOVING PARTY INCLUDED:

FILED

AUG 17 2016

KCDC - West Division
Shoreline Courthouse

RESIDENTIAL NATURE OF CALL

TIME (2AM)

" "

" (30/1/16

" YEAR i.e. COLD

WOMAN YELLING SHE IS LOCKED OUT
'AND WILL "CALL THE POLICE"'

OFFICERS HEARING ARGUING, GLASS
BREAKING (2X'S) +

DEAR NEED TO CALL SHORELINE FIRE
FOR TOOLS TO BREAK IN THE RESIDENCE ALL MAKE
THE COMMUNITY CARETAKING FUNCTION AN EXCEPTION
TO 4th AMENDMENT PRIVATE CONSIDERATION.

SMITH

DOUGLAS T. SMITH

No. 77094-2 *I*

COURT OF APPEALS, DIVISION I
OF THE STATE OF WASHINGTON

SOLOMON MCLEMORE,

Petitioners/Defendants

v.

CITY OF SHORELINE,

Respondent/Plaintiff

MOTION FOR DISCRETIONARY REVIEW

Appendix 5

1 Amendment search issue raised by the defense. The court therefore denied the defendants
2 motions to suppress dismiss.

3 No other substantive pretrial motions have been ruled upon by the court.

4 **V. EVIDENTIARY ISSUES**

5 The City asks the court to rule on the following motions in limine. The City has provided legal
6 authority where appropriate. The City reserves the right to bring further motions where
7 necessary during the course of the trial.

9 **1. Disclosure of the General Nature of the Defense**

Granted 9/27/14

10 The nature of the defense has been disclosed as general denial. Pursuant to CrRLJ 4.7,
11 the City demands further disclosure of the general nature of the defense if it is other than
12 "general denial."

13 **2. Disclosure of Defense Witness.**

*Witnesses disclosed 9/27/16
granted*

14 ~~The defense has provided the City with notice that it may call a Dr. Leslie Newton as~~
15 ~~well as the defendant potentially.~~ The City requests that the defense make known any other
16 witnesses for trial and provide the City with the opportunity to interview the witnesses prior to
17 beginning its case in chief.

18 **3. Production of physical evidence, documents, defense investigator's**
19 **notes, and other impeachment evidence.**

*Defense has provided
all information
described
9/27/14*

20 The City requests that the defendant make available any physical evidence,
21 photographs, or other documents, other than those items previously provided by the City as a
22 matter of discovery that they intend to rely on at trial.

23 The City further requests an order compelling the defendant to provide all written or
24 recorded statements of defense interviews with the City's witnesses if a defense investigator will
25 be called as a witness to impeach the testimony of the City's witness. This motion is based on
CrRLJ 4.7 and State v. Yates, 111 Wn.2d 793, 765 P.2d 291 (1998). The City also requests an

1 order compelling the disclosure of any additional evidence that may be used to impeach a City's
2 witness. State v. Dunivin, 65 Wn. App 728, 829 P.2d 799 (1992).

4 **4. Motion to prohibit Defense Counsel from asking the members of the**
5 **Jury to place him or herself in the defendant's position.** *Denied*

6 The City moves to prohibit defense counsel from asking members of the jury to place
7 him or herself in the Defendant's position. An argument urging the members of the jury to place
8 themselves in the place of one of the parties is improper because it encourages the jury to depart
9 from the sworn duty, the obligation to remain neutral, and to decide the case on the basis of
10 persona interest and bias. Adkins v. Aluminum Co. of America, 110 Wn.2d 128, 750 P.2d 1257
11 (1998); 14A WAPRAC § 30.26. *a/27/16*

12 **5. Motion to Exclude Witnesses** *Granted*

13 Pursuant to ER 615, The City moves this court to exclude all witnesses from the
14 courtroom except during their own testimony. However, the City will reserve the right to have
15 an officer involved in the case remain at counsel table during the trial. *a/27/16*

16 **6. Motion to exclude evidence or argument concerning the penalty the**
17 **defendant is subject to if convicted.** *Granted a/27/16*

18 Pursuant to WASH. R. EVID. 401, 402, and 403, the City moves in limine for an order
19 prohibiting the defendant at any point during this trial from arguing, eliciting testimony, offering
20 evidence, suggesting, or alluding in any way to the possibility of punishment, or effect of
21 punishment, in this case. This motion does not apply to informing the jury of the ramifications
22 of its verdict as a reason for it to decide carefully. *except court will follow WDC re: requiring that jurors be careful*

23 **7. Lack of Search Warrant obtained by Deputies** *granted*

24 The Court held that the officers acted within a search warrant exception. Therefore, the
25 City asks this court to preclude the defense from further raising that issue at trial as it is not

1 properly an issue for the jury to decide, it has already been settled by the court, and the danger of
2 confusion of the jury is high.

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5 Respectfully submitted this 27th day of September, 2016

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7 Carmen McDonald WSBA # 32561
8 Asst. City Prosecutor

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No. 77094-2 I

COURT OF APPEALS, DIVISION I
OF THE STATE OF WASHINGTON

SOLOMON MCLEMORE,

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Respondent/Plaintiff

MOTION FOR DISCRETIONARY REVIEW

Appendix 6

CERTIFICATE OF SERVICE

I certify that on the 14th day of July, 2016, I caused a true and correct copy of this Motion to be served on the following in the manner indicated below:

Carmen McDonald
City of Shoreline Prosecutor
17553 15th Ave. NE
Shoreline, WA 98155

Via hand delivery and electronic email to:
carmenmcdonald@comcast.net
prosecutor@shorelinewa.gov

By:  37542
David Iannotti

STEWART MACNICHOLS HARMELL INC PS

July 14, 2017 - 12:02 PM

Transmittal Information

Filed with Court: Court of Appeals Division I
Appellate Court Case Number: 77094-2
Appellate Court Case Title: State of Washington, Respondent v. Solomon McLemore, Petitioner
Superior Court Case Number: 16-1-07811-3

The following documents have been uploaded:

- 770942_Motion_20170714114830D1903145_0947.pdf
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Motion 1 - Discretionary Review
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A copy of the uploaded files will be sent to:

- carmenmcdonald@comcast.net
- paoappellateunitmail@kingcounty.gov
- prosecutor@shorelinewa.gov

Comments:

Sender Name: David Iannotti - Email: david@sbmhlaw.com
Address:
655 W SMITH ST STE 210
KENT, WA, 98032-4477
Phone: 253-859-8840

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