

71135-1

71135-1

NO. 711351

COURT OF APPEALS, DIVISION I  
OF THE STATE OF WASHINGTON

---

STATE OF WASHINGTON, Respondent,

v.

SAMUEL RAYMUNDO, Appellant,

---

BRIEF OF APPELLANT

---

Mitch Harrison  
Attorney for Appellant  
Harrison Law Firm  
101 Warren Avenue N  
Seattle, Washington 98109  
Tel (253) 335 - 2965  
Fax (888) 598 - 1715

FILED  
COURT OF APPEALS DIV 1  
STATE OF WASHINGTON  
2014 JUN 24 PM 12:30

**TABLE OF CONTENTS**

**I. INTRODUCTION** .....1

**II. ASSIGNMENTS OF ERROR** ..... 1-3

**III. ISSUES PERTAINING TO THE ASSIGNMENTS OF ERROR** ..3

**IV. STATEMENT OF THE CASE** ..... 3-14

**V. ARGUMENT**..... 14-36

**A. Standard of Review**.....14-15

**B. The Trial Court Erred When It Refused To Suppress the Results of the Warrantless Blood Draw**..... 15-26

1. Tukwila adopted a per se rule against obtaining warrants for blood draws and applied the per se rule against Mr. Raymundo in violation of the Fourth Amendment ..... 17-21

2. The warrantless blood draw violated the Fourth Amendment because exigent circumstances did not exist to justify the failure to obtain a warrant..... 21-26

**C. The Trial Court Erred When It Admitted the Results of the Blood Test Without Proper Foundation** ..... 27-30

**D. The Hit and Run Conviction was not Supported by Sufficient Evidence** ..... 31-36

1. The State did not produce sufficient evidence showing that Mr. Raymundo did not satisfy his obligation to give the specified information and to assist the injured person..... 32-34

2. The State failed to produce sufficient evidence that Mr. Raymundo fled the accident scene.....35

**VI. CONCLUSION**.....36

## TABLE OF AUTHORITIES

### UNITED STATES SUPREME COURT CASES

<i>Brigham City v. Stuart</i> , 547 U.S. 398, 126 S. Ct. 2000, 36 L. Ed. 2d 650 (2006).....	21
<i>Cupp v. Murphy</i> , 412 U.S. 291, 93 S. Ct. 2000, 36 L. Ed. 2d 900 (1973).....	22
<i>Florida v. Bostick</i> , 501 U.S. 429, 111 S. Ct. 2382 (1991).....	17
<i>Michigan v. Fisher</i> , 558 U.S. 45, 130 S. Ct. 546, 175 L. Ed. 2d 410 (2009).....	22
<i>Michigan v. Tyler</i> , 436 U.S. 499, 98 S. Ct. 1942, 56 L. Ed. 2d 486 (1978).....	22
<i>Missouri v. McNeely</i> , 133 S. Ct. 1552, 185 L. Ed. 2d 696 (2013).....	16, 18, 21, 22, 25
<i>Schmerber v. California</i> , 384 U.S. 757, 86 S. Ct. 1826, 16 L. Ed. 2d 908 (1966).....	16, 17
<i>Skinner v. Ry. Labor Execs. ' Ass'n</i> , 489 U.S. 602, 109 S. Ct. 1402, 103 L. Ed. 2d 639 (1989) .....	17
<i>Shepard v. U.S.</i> , 290 U.S. 96, 54 S. Ct. 22, 78 L. Ed. 196 (1933).....	29
<i>United States v. Santana</i> , 427 U.S. 38, 96 S. Ct. 2406, 49 L. Ed. 2d 300 (1976).....	22
<i>Winston v. Lee</i> , 470 U.S. 753, 105 S. Ct. 1611, 84 L. Ed. 2d 662 (1985).....	16

### OTHER FEDERAL CASES

<i>Brown v. Keane</i> , 355 F.3d 82 (2d Cir. 2004).....	29
<i>United States v. Nevils</i> , 598 F.3d 1158 (9th Cir. 2010) .....	31

WASHINGTON SUPREME COURT CASES

*State v. Cardenas*, 146 Wn.2d 400, 47 P.3d 127 (2002) .....23

*State v. Clark* 17 Wn.2d 19, 308 P.3d 590 (2013).....16

*State v. Eserjose*, 171 Wn.2d 907, 259 P.3d 172 (2011) .....15

*State v. Garcia-Salgado*, 170 Wn.2d 176, 240 P.3d 153 (2010) .....16, 17

*State v. Garvin*, 166 Wn.2d 242, 207 P.3d 1266 (2009).....16

*State v. Hill*, 123 Wn.2d 641, 870 P.2d 313 (1994).....15

*State v. Huber*, 129 Wn. App. 499, 119 P.3d 388 (2005).....31

*State v. Jackson*, 137 Wn.2d 712, 976 P.2d 1229 (1999) .....15, 31

*State v. Parker*, 139 Wn.2d 486, 987 P.2d 73 (1999).....16

*State v. Patterson*, 122 Wn.2d 731, 774 P.2d 10 (1989) .....23

*State v. Smith*, 165 Wn.2d 511, 199 P.3d 386 (2009).....22

*State v. Tibbles*, 169 Wn.2d 364, 236 P.3d 885 (2010) ..... 19, 21-23

*State v. Valdez*, 167 Wn.2d 761, 224 P.3d 751 (2009) .....16

WASHINGTON COURT OF APPEALS CASES

*State v. Audley*, 77 Wn. App. 897, 894 P.2d 1359 (1995) .....23

*State v. Bosio*, 107 Wn. App. 462, 27 P.3d 636 (2001).....28

*State v. Brown*, 145 Wn. App. 62, 184 P.3d 1284 (2008).....15, 27, 28

*State v. Clark*, 62 Wn. App. 263, 814 P.2d 222 (1991).....28

*State v. Huber*, 129 Wn. App. 499, 119 P.3d 388 (2005).....31

*State v. Hultenschmidt*, 125 Wn. App. 259, 102 P.3d 192 (2005).....27, 28

<i>State v. Rulan</i> , 97 Wn. App. 884, 970 P.2d 821 (1999).....	23
<i>State v. Wilbur-Bobb</i> , 134 Wn. App. 627, 141 P.3d 665 (2006) .....	27
<u>CONSTITUTIONAL PROVISIONS</u>	
U.S. CONST. amend. IV.....	15
Const. art. I, § 7.....	15
<u>STATUTES AND REGULATIONS</u>	
RCW 46.52.020 .....	31, 35
RCW 46.61.506 .....	27
WAC 448-14-020 .....	28

## **I. INTRODUCTION**

Samuel Raymundo accompanied his cousin, Jamie Hernandez, to two bars in the Tukwila area. At the second bar, Mr. Raymundo was washing his hands in the bathroom when Mr. Hernandez burst in and exclaimed that someone was about to kill them. Mr. Raymundo, who had knowledge of his cousin's involvement with drugs, had never seen his cousin express such fear. Mr. Hernandez tossed Mr. Raymundo the keys to the car and implored him to drive. Mr. Raymundo simply reacted. A moment later, the car was involved in an accident. Mr. Raymundo escaped without injury, but Mr. Hernandez did not survive.

The State charged Mr. Raymundo with Reckless Driving, Hit and Run, and Vehicular Homicide. Prior to trial, Mr. Raymundo moved to suppress the results from a warrantless blood test taken after the accident. The trial court, finding that exigent circumstances justified the warrantless blood draw, denied the motion.

At the conclusion of the trial, the jury returned a guilty verdict on all counts. Mr. Raymundo was sentenced accordingly.

## **II. ASSIGNMENTS OF ERROR**

1. The trial court erred when, at the conclusion of the 3.6 Hearing, it found that Mr. Raymundo had fled the scene of the accident. (Finding of Fact #7).

2. The trial court erred when, at the conclusion of the 3.6 Hearing, it found that Officer Dart knew that obtaining a search warrant can take two or three hours when Officer Dart testified he had never obtained a telephonic warrant. (Finding of Fact #20).

3. The trial court erred when, at the conclusion of the 3.6 Hearing, it concluded that the police were justified in obtaining Mr. Raymundo's blood without a warrant due to exigent circumstances. (Conclusion of Law #1).

4. The trial court erred when, at the conclusion of the 3.6 Hearing, it concluded that exigent circumstances existed due to 1) the gravity of the case; 2) the delay caused by the defendant leaving the scene; 3) the defendant having to be transported to the hospital; and 4) the dissipation of alcohol in the blood. (Conclusion of Law #3).

5. The trial court erred when, at the conclusion of the 3.6 Hearing, it concluded that the officers exhibited no bad faith. (Conclusion of law #4).

6. The trial court erred when it denied the defense motion to suppress the results from the blood draw even though the Tukwila police applied a per se exception to the warrant requirement.

7. The trial court erred when it denied the defense motion to suppress the results from the blood draw because the court found that exigent circumstances provided an exception to the warrant requirement.

8. The trial court erred by overruling the defense objection for lack of foundation and admitting the results of the blood draw.
9. The trial court erred by entering a judgment and sentence for the hit and run where the evidence was insufficient to support the verdict.

### **III. ISSUES PERTAINING TO THE ASSIGNMENTS OF ERROR**

1. Whether the Tukwila police applied a per se rule against obtaining search warrants when the police officers did not even know how to obtain search warrants.
2. Whether exigent circumstances justified ignoring the warrant requirement when the time to take a blood sample takes roughly the same amount of time as obtaining a telephonic search warrant.
3. Whether the State failed to lay the proper foundation for the results of the blood test when the State's expert did not offer any testimony based on personal knowledge that the enzyme poison was present in the vial.
4. Whether the evidence supporting the hit-and-run conviction was sufficient when the State offered insufficient evidence that Mr. Raymundo failed to perform the duties imposed by the statute.

### **IV. STATEMENT OF THE CASE**

#### **A. The Accident**

Mr. Raymundo awoke in the late morning of March 1. He did not have to work that day, so he spent the morning and the early afternoon

watching TV and cleaning his home, during which time he had a beer.<sup>1</sup> That afternoon, Mr. Raymundo walked across the street to his cousin Pablo's home. Here, Mr. Raymundo helped Pablo work on his truck and he drank a beer.<sup>2</sup> At about 5:30 P.M., Mr. Raymundo went back to his home to make dinner. After he ate, Mr. Raymundo went back over to Pablo's home where he had another beer.<sup>3</sup>

A few hours later, another one of Mr. Raymundo's cousins, Jamie Hernandez, summoned Mr. Raymundo to go out and "do some rounds."<sup>4</sup> Pablo handed Mr. Raymundo an unopened beer,<sup>5</sup> which was later found at the accident site. Mr. Raymundo picked up Jamie—Jamie offered Mr. Raymundo some cocaine<sup>6</sup>—and they went to a local bar, Juan Colorado.<sup>7</sup> Here, Mr. Raymundo drank two light beers.

At some point, they decided to go to another bar. Because Mr. Raymundo was unfamiliar with the area, Jamie drove.<sup>8</sup> The cousins arrived at the next bar, Cheves & Beer, sometime between 12:00 and 12:30 A.M.<sup>9</sup> Soon after arriving, Jamie received a phone call and Mr.

---

<sup>1</sup> 10/15/13 RP at 78.

<sup>2</sup> *Id.* at 79.

<sup>3</sup> *Id.* at 80.

<sup>4</sup> *Id.*

<sup>5</sup> *Id.* at 82.

<sup>6</sup> *Id.* at 83.

<sup>7</sup> *Id.* at 81.

<sup>8</sup> *Id.* at 88.

<sup>9</sup> *Id.* at 83.

Raymundo went into the restroom.<sup>10</sup> Suddenly, Jamie “came rushing into the bathroom, hit the door, and he started telling me, let’s go, let’s go, there’s somebody outside trying to kill me and shit.”<sup>11</sup>

The two cousins ran out into the bar and they could see a light going around the bar, which scared both cousins.<sup>12</sup> They peered through a crack in the door, and Jamie asked Mr. Raymundo to start the car. This made sense because no one was trying to kill Mr. Raymundo. Mr. Raymundo began driving through the parking lot when Jamie rushed into the truck and shouted “step on it.”<sup>13</sup>

At this time, Mr. Raymundo observed a car go by and noticed the window roll down a little bit.<sup>14</sup> He recognized the person in the car as one of Jamie’s cocaine dealers. The only things Mr. Raymundo knew about this dealer were that he sold large quantities of cocaine, he was in a gang, and he was “pretty ruthless.”<sup>15</sup>

Mr. Raymundo drove away from the bar to avoid the cocaine dealer trying to kill Jamie. Then, Mr. Raymundo came upon a sharp curve. Due to darkness of night and his unfamiliarity with the area, he was not

---

<sup>10</sup> 10/15/13 RP at 84.

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

<sup>13</sup> *Id.* at 85.

<sup>14</sup> *Id.*

<sup>15</sup> *Id.* at 86.

prepared to make the sharp turn. He slammed on the brakes, but he lost control and crashed the car.<sup>16</sup>

As soon as he realized what had happened, Mr. Raymundo called 911 and began searching for his cousin.<sup>17</sup> While he was looking for a street sign so that he could give the 911 operator the location, he handed the phone to Mr. Lower, a bus driver who had just gotten off work and happened to be in the area. After asking Lower to give directions to the dispatcher, Mr. Raymundo ran back to the accident site to try to help Jamie. But Jamie was pinned under the truck and Mr. Raymundo could not help by himself. Jamie needed someone to help him lift the car, so he ran over to some nearby houses hoping that some of the residents would assist him.<sup>18</sup> After his first few attempts failed, Mr. Raymundo rushed back to the accident site hoping that aid had arrived.<sup>19</sup> Almost immediately, Mr. Raymundo noticed big flashing lights and was suddenly bitten by a police canine.

Mr. Raymundo was immediately arrested and placed in route for the hospital and a standard blood draw. Throughout his arrest, Mr. Raymundo kept asking about his cousin and his condition. Finally, once they arrived at the hospital, a police officer revealed to Mr. Raymundo that

---

<sup>16</sup> 10/15/13 RP at 87.

<sup>17</sup> *Id.* at 88.

<sup>18</sup> *Id.* at 89.

<sup>19</sup> *Id.* at 92.

his cousin was dead.<sup>20</sup> Upon hearing that his cousin was dead, Mr. Raymundo began crying and had to be sedated.<sup>21</sup> Mr. Raymundo was arrested and booked for vehicular homicide.<sup>22</sup> At 6:44 A.M., Officer Dart began interrogating Mr. Raymundo.<sup>23</sup>

### **B. The Suppression Hearing**

At the 3.6 hearing, Mr. Raymundo challenged the warrantless blood draw. To meet its burden of showing an exception to the warrant requirement was met, the State offered the testimony of Officer Prasad and Officer Dart.

Officer Prasad, who was promoted to sergeant after this case, is a seven-year veteran of the Tukwila police force.<sup>24</sup> At 12:40 A.M., Prasad was dispatched to the accident. Prasad arrived three minutes later.<sup>25</sup> Prasad noticed two men: one was standing by the road, the other was going in a different direction.<sup>26</sup> The man by the road told Prasad that the other man had given him a cell phone and asked him to give the location of the accident to the 911 operator.<sup>27</sup> Prasad briefly followed the other man, but

---

<sup>20</sup> *Id.* at 94.

<sup>21</sup> 10/15/13 RP at 94-95.

<sup>22</sup> *Id.* at 94.

<sup>23</sup> *Id.* at 96.

<sup>24</sup> 9/30/13 RP at 8.

<sup>25</sup> *Id.* at 11.

<sup>26</sup> *Id.*

<sup>27</sup> *Id.*

then decided to check the accident. He saw Mr. Raymundo's cousin, who was unconscious, trapped underneath the car.<sup>28</sup> Prasad then called for the fire and medical trucks.<sup>29</sup>

As more people arrived on the scene, Prasad began taking pictures.<sup>30</sup> By this time, several other officers had arrived at the accident site.<sup>31</sup> Then at 12:48 A.M. the K-9 Unit arrived.<sup>32</sup> Only three minutes later, the K-9 Unit contacted Mr. Raymundo.<sup>33</sup> By 1:05 A.M., Prasad told dispatch that Mr. Raymundo's cousin had died.<sup>34</sup> Prasad remained at the scene putting up evidence tape.<sup>35</sup> There were some moments where Prasad was not doing anything other than standing around.<sup>36</sup>

During this time, the decision was made to take Mr. Raymundo to the hospital for a blood draw. Even though blood draws are searches under the Fourth Amendment, none of the police even considered whether requesting a warrant was necessary.

Prasad offered surprising testimony for an experienced police officer. He stated that he was not aware of the procedures to get a search

---

<sup>28</sup> *Id.* at 12.

<sup>29</sup> *Id.* at 13.

<sup>30</sup> 9/30/13 RP at 14.

<sup>31</sup> *Id.* at 67.

<sup>32</sup> *Id.* at 15.

<sup>33</sup> *Id.* 26.

<sup>34</sup> *Id.* 17.

<sup>35</sup> *Id.* at 18.

<sup>36</sup> *Id.* at

warrant at that time of night.<sup>37</sup> He further confessed that he had never obtained a search warrant at that time of night.<sup>38</sup> Moreover, he admitted that in all his years on the police force he had never obtained one search warrant.<sup>39</sup> Finally, he revealed that he had no idea how to get a telephonic warrant<sup>40</sup> and that he never even considered doing so.<sup>41</sup>

To rebut these admissions Prasad said that he did feel qualified to get a search warrant.<sup>42</sup> He testified, “I haven’t done [a search warrant], no, but I could try to write one if somebody taught me how to do it . . .”<sup>43</sup> Immediately after making this statement, Prasad again acknowledged that he could not have obtained a search warrant even if he had wanted to.<sup>44</sup>

Despite being ignorant of search warrants, Prasad was able to articulate some exigent circumstances. He believed that the gravity of the situation and the danger of contamination of the blood qualified as exigent circumstances. However, Prasad did not observe any tubes going into Mr. Raymundo, nor did he inquire about possible contamination with the hospital staff.

---

<sup>37</sup> *Id.* at 26.

<sup>38</sup> *Id.*

<sup>39</sup> 9/30/13 RP at 27.

<sup>40</sup> *Id.*

<sup>41</sup> *Id.* at 39.

<sup>42</sup> *Id.* at 45.

<sup>43</sup> *Id.*

<sup>44</sup> *Id.*

Prasad's invocation of exigent circumstances conflicted with his later testimony. He acknowledged that he was just hanging around the accident site.<sup>45</sup> He also admitted that he felt no urgency to get the blood sample.<sup>46</sup>

Notably, Prasad also testified that it usually takes two to three hours to process a DUI. This length of time is measured from the initial stop to recording the breath sample.<sup>47</sup>

Officer Dart, a recently retired member of the Tukwila police force, was the State's second and final witness. Dart testified that he never considered obtaining a warrant for the blood draw.<sup>48</sup>

However, Dart, like Prasad, admitted ineptness regarding search warrant requests. Dart had never obtained a search warrant for a similar type of case.<sup>49</sup> He testified that he would have had to take his request for a telephonic warrant to a district court judge, which he felt was more difficult than using a familiar city judge.<sup>50</sup> Dart also admitted that in over 20 years of police work, he had only requested "a couple of search

---

<sup>45</sup> *Id.* at 44.

<sup>46</sup> *Id.*

<sup>47</sup> 9/30/13 RP at 33.

<sup>48</sup> *Id.* at 54.

<sup>49</sup> *Id.* at 55.

<sup>50</sup> *Id.*

warrants.”<sup>51</sup> Dart estimated that it could take three hours to secure a search warrant.<sup>52</sup>

Dart later revealed that he had never requested a telephonic warrant.<sup>53</sup> Although he claimed to be familiar with the process, he admitted that he was unable to use the laptop computer in his police car.<sup>54</sup> When asked to describe the process, Dart simply talked about filling out forms.<sup>55</sup>

At 1:34 A.M., Prasad told dispatch he was going to the hospital for a blood draw. It took Prasad almost half an hour to get there because he had to stop by the police station to pick up a blood draw kit.<sup>56</sup> Prasad admitted that he did not keep blood vials in his patrol car “by choice.”<sup>57</sup>

At the hospital, Prasad contacted Mr. Raymundo and told him that he was under arrest for vehicular homicide.<sup>58</sup> Prasad did not notice Mr. Raymundo exhibiting any injuries or being connected to any tubes or other medical equipment.<sup>59</sup> At that time, Prasad had a lab technician conduct a blood draw. About four hours later, Prasad drove Mr. Raymundo back to the station.

---

<sup>51</sup> *Id.* at 56.

<sup>52</sup> *Id.*

<sup>53</sup> *Id.* at 71.

<sup>54</sup> *Id.* at 72.

<sup>55</sup> 9/30/13 RP at 73.

<sup>56</sup> *Id.* at 19.

<sup>57</sup> *Id.* at 47.

<sup>58</sup> *Id.* at 21.

<sup>59</sup> *Id.* at 23.

At the conclusion of the hearing, the trial court found that exigent circumstances justified the warrantless search. In its findings of fact, the trial court found exigent circumstances existed because 1) the gravity of the accident; 2) the defendant caused delay by leaving the scene; 3) the defendant had to be transported to the hospital for treatment; and 4) the dissipation of alcohol in the blood.

### **C. The Trial**

The State took Mr. Raymundo to trial on one count of Vehicular Homicide, one count of Felony Hit and Run, and one count of Reckless Driving.

#### 1. Foundation for the Results of the Blood Test

The results of the blood test provided the strongest evidence that Mr. Raymundo was intoxicated at the time of the accident. To provide the required foundation, the State called the toxicologist, Asa Louis.

Louis was the State's lone witness that could provide proper foundation for the blood test results. He testified that the blood vials are supposed to contain an enzyme inhibitor and an anticoagulant.<sup>60</sup> He described the functions of these chemicals and mentioned the manufacture of the vials is regulated by the FDA.<sup>61</sup> As far as Louis interacted with the

---

<sup>60</sup> 10/8/13 RP at 50.

<sup>61</sup> *Id.* at 50-51.

vials, they appeared to be packaged properly.<sup>62</sup> He also mentioned that the manufacture attaches certificates to vouch for the quality of the vials.<sup>63</sup> Finally, he said that the labels of the vials indicated that the proper amount of the chemicals were inside the vials.<sup>64</sup>

Louis could attest to the presence of the anticoagulant because the blood was free flowing.<sup>65</sup> However, Louis said there was no way to test for the presence of the enzyme poison.<sup>66</sup> Instead, he relied on the certificate, which he did not bring to court.<sup>67</sup>

Over a strong objection from defense counsel for lack of foundation, the trial court admitted the results of the blood test.

## 2. Evidence Supporting the Hit and Run

To provide evidence to support the hit and run charge, the State called the several police officers and the bus driver, who happened to be present a few minutes after the accident.

Prasad arrived a few minutes after the accident was reported. He observed Mr. Raymundo walk toward an embankment.<sup>68</sup> Prasad then followed Mr. Raymundo's path toward the accident site.<sup>69</sup> Prasad lost

---

<sup>62</sup> *Id.* at 73.

<sup>63</sup> *Id.* at 74.

<sup>64</sup> *Id.* at 76.

<sup>65</sup> 10/8/13 RP at 52.

<sup>66</sup> *Id.* at 77.

<sup>67</sup> *Id.* at 75, 93, 101.

<sup>68</sup> 10/7/13 RP at 67.

<sup>69</sup> *Id.* at 68.

sight of Mr. Raymundo and ran five or ten yards before stopping.<sup>70</sup> He had no further contact with Mr. Raymundo until later at the hospital.<sup>71</sup>

Douglas Lee Lower, a bus driver, who happened to arrive at the accident scene before the police, also testified. Lower observed Mr. Raymundo walk up the embankment toward him with his “phone to his face.”<sup>72</sup> Mr. Raymundo handed Lower the phone, and Lower found himself speaking to the 911 operator.<sup>73</sup> Lower then noticed Mr. Raymundo go toward his right.<sup>74</sup>

Finally, Officer James Sturgill of the K-9 Unit testified. Sturgill began tracking Mr. Raymundo as soon as he arrived at the accident site.<sup>75</sup> The dog ran toward a grassy area and then on in the direction of some houses.<sup>76</sup> After reaching the street, Sturgill directed the dog back toward the starting point.<sup>77</sup> A moment later, the dog found Mr. Raymundo.<sup>78</sup> Sturgill admitted that he could not be certain the dog was tracking Mr.

---

<sup>70</sup> *Id.* at 69.

<sup>71</sup> *Id.* at 84.

<sup>72</sup> 10/14/13 RP at 52.

<sup>73</sup> *Id.* at 53.

<sup>74</sup> *Id.* at 61.

<sup>75</sup> *Id.* at 70.

<sup>76</sup> *Id.* at 74, 75.

<sup>77</sup> *Id.* at 97.

<sup>78</sup> *Id.* at 99.

Raymundo the entire time.<sup>79</sup> Mr. Raymundo was found “not far” from the accident—150 to 200 feet.<sup>80</sup>

At the conclusion of the trial, Mr. Raymundo was convicted as charged. He was sentenced to 126 months of incarceration.

## **V. ARGUMENT**

### **A. Standard of Review**

Conclusions of law from the pretrial hearing relating to the suppression of evidence are reviewed *de novo*.<sup>81</sup> Unchallenged findings of fact are verities on appeal.<sup>82</sup> Moreover, the trial court’s decision to admit the results of the blood test without proper foundation is reviewed for abuse of discretion.<sup>83</sup> Finally, when analyzing the sufficiency of evidence, the court makes inferences in favor the State and determines whether a jury could still find the defendant guilty beyond a reasonable doubt.<sup>84</sup>

### **B. The Trial Court Erred When It Refused To Suppress the Results of the Warrantless Blood Draw.**

The trial court violated the Fourth Amendment and Article I, section 7 of Washington’s constitution when it failed to suppress the warrantless blood draw of Mr. Raymundo.

---

<sup>79</sup> *Id.* at 102.

<sup>80</sup> *Id.* at 103.

<sup>81</sup> *State v. Eserjose*, 171 Wn.2d 907, 912, 259 P.3d 172 (2011).

<sup>82</sup> *State v. Hill*, 123 Wn.2d 641, 644, 870 P.2d 313 (1994).

<sup>83</sup> *State v. Brown*, 145 Wn. App. 62, 69, 184 P.3d 1284 (2008).

<sup>84</sup> *State v. Jackson*, 137 Wn.2d 712, 730, 976 P.2d 1229 (1999).

The Fourth Amendment protects against unreasonable searches and seizures.<sup>85</sup> Article I, section 7 provides that “[n]o person shall be disturbed in his private affairs, or his home invaded, without authority of law.”<sup>86</sup> Although both constitutional provisions are similar, Article I, section 7 has been widely recognized as providing greater protection than the Fourth Amendment.<sup>87</sup> Article I, section 7 “necessarily encompasses those legitimate expectations of privacy protected by the Fourth Amendment.”<sup>88</sup>

Warrantless searches under the Fourth Amendment and Article I, section 7 are both generally considered unreasonable.<sup>89</sup> Although some narrowly drawn exceptions to the warrant requirement exist, the State bears the burden of proving that an exception applies.<sup>90</sup> The remedy for a Fourth Amendment violation is the exclusion of the illegally obtained evidence.<sup>91</sup>

Drawing blood constitutes a search. Warrantless searches of dwellings typically require an emergency; “no less could be required when

---

<sup>85</sup> U.S. CONST. amend. IV.

<sup>86</sup> Const. art. I, § 7.

<sup>87</sup> See *State v. Valdez*, 167 Wn.2d 761, 772, 224 P.3d 751 (2009).

<sup>88</sup> *State v. Garcia-Salgado*, 170 Wn.2d 176, 183, 240 P.3d 153 (2010) (quoting *State v. Parker*, 139 Wn.2d 486, 493-94, 987 P.2d 73 (1999)).

<sup>89</sup> *Garcia-Salgado*, 170 Wn.2d at 184 (citing *State v. Garvin*, 166 Wn.2d 242, 249, 207 P.3d 1266 (2009)).

<sup>90</sup> *Garvin*, 166 Wn.2d at 249-50.

<sup>91</sup> *State v. Clark* 17 Wn.2d 19, 24, 308 P.3d 590 (2013).

intrusions into the human body are concerned.”<sup>92</sup> Blood draws are “an invasion of bodily integrity [that] implicates an individual’s ‘most personal and deep-rooted expectations of privacy.’”<sup>93</sup> The United States Supreme Court has held that “a compelled instrusio[n] into the body for blood to be analyzed for alcohol content” is a search.<sup>94</sup> The courts even recognize that less invasive procedures qualify as searches, including swabbing a defendant’s cheek for DNA<sup>95</sup> or using a Breathalyzer to measure the level of alcohol in someone’s breath.<sup>96</sup>

1. Tukwila adopted a per se rule against obtaining warrants for blood draws and applied the per se rule against Mr. Raymundo in violation of the Fourth Amendment.

The police that responded to the accident sparking this case adopted a per se rule that drawing a person’s blood did not require a search warrant. Applying such a rule violates the Fourth Amendment. Accordingly, the blood draw should have been suppressed.

Per se rules are followed as a matter of law. As a consequence, these types of rules avoid any consideration of particularities of a situation. A per se rule reaches a conclusion independent of the facts.<sup>97</sup>

---

<sup>92</sup> *Schmerber v. California*, 384 U.S. 757, 770, 86 S. Ct. 1826, 16 L. Ed. 2d 908 (1966).

<sup>93</sup> *Missouri v. McNeely*, 133 S. Ct. 1552, 1558, 185 L. Ed. 2d 696 (2013) (quoting *Winston v. Lee*, 470 U.S. 753, 760, 105 S. Ct. 1611, 84 L. Ed. 2d 662 (1985)).

<sup>94</sup> *Schmerber*, 384 U.S. at 768.

<sup>95</sup> See *Garcia-Salgado*, 170 Wn.2d at 184.

<sup>96</sup> *Skinner v. Ry. Labor Execs.’ Ass’n*, 489 U.S. 602, 617, 109 S. Ct. 1402, 103 L. Ed. 2d 639 (1989).

<sup>97</sup> See generally *Florida v. Bostick*, 501 U.S. 429, 111 S. Ct. 2382, 115 L. Ed. 389 (1991).

The Fourth Amendment does not permit per se rules to be applied to categorically allow police to draw a person's blood without a warrant.

In *Missouri v. McNeely*, the United States Supreme Court addressed the question of whether the natural metabolism of alcohol allowed for a per se exception to the Fourth Amendment's warrant requirement for blood tests. In that case, a police officer stopped the defendant after observing the defendant's truck exceeding the speed limit and repeatedly crossing the center line.<sup>98</sup> The defendant showed signs of intoxication: bloodshot eyes, slurred speech, and alcohol-scented breath.<sup>99</sup> The police officer took the defendant to the hospital for a blood sample; the defendant refused, but a blood draw was taken anyway.<sup>100</sup>

The Court found that a per se rule allowing the police to take warrantless blood samples violated the Fourth Amendment because there are situations where the police can obtain a warrant without harming the efficacy of the blood sample.<sup>101</sup> In reaching this ruling, the Court pointed to delays that occur even when a warrant is not obtained, the nature of blood testing, and the advances in technology.<sup>102</sup>

---

<sup>98</sup> *McNeely*, 133 S. Ct. at 1556.

<sup>99</sup> *Id.*

<sup>100</sup> *Id.* at 1557.

<sup>101</sup> *Id.* at 1561.

<sup>102</sup> *Id.*

In this case, the police adhered to a categorical rule against obtaining search warrants. At the suppression hearing, the State argued that exigent circumstances obviated the need to obtain a warrant. Determining whether exigent circumstances exist requires a consideration of the totality of the circumstances.<sup>103</sup> The failure to consider the facts of each case demonstrates a per se rule., which is exactly what happened here.

Simply because this was a vehicular assault accident, the responding police officers decided, as a matter of course, that they would get a blood draw from Mr. Raymundo. They never once considered whether exigent circumstances did in fact exist.

No officer considered whether a search warrant was necessary. Prasad admitted that he had never considered getting a search warrant, though he said that he had plenty of time to just stand round and do nothing after the accident.<sup>104</sup> Dart, the other officer to testify at the suppression hearing, similarly never considered obtaining a search warrant.<sup>105</sup>

These officers openly admitted that even *considering* a warrant was not a thought that crossed their mind. Regardless of the situation, they

---

<sup>103</sup> *State v. Tibbles*, 169 Wn.2d 364, 370, 236 P.3d 885 (2010).

<sup>104</sup> 9/30 RP at 39.

<sup>105</sup> *Id.* at 54.

assumed one was unnecessary. This was a categorical rule against obtaining a warrant.

And their conflicting testimony is not convincing evidence to the contrary. In fact, it's convincing that the rule was categorical. The evidence shows not only that these officers were not trained to obtain a warrant, but also that they had not ever learned or retained this information through experience in the field. Clearly, the officers were not properly trained to obtain a search warrant: one officer admitted to not knowing, and the other—a 25 year veteran—had only done a “couple” in his entire tenure.

Through seven years on the Tukwila police force,<sup>106</sup> no one had taught Officer Pasrad how to get a search warrant. In fact, not only had he never applied for one late at night,<sup>107</sup> he also confessed to never having obtained even one search warrant in his entire career as a police officer.<sup>108</sup>

Dart's lack of training and experience was even more shocking. Although he claimed to be “familiar” with search warrants, in a 24-year career, Dart admitted that he had only requested a “couple” of search warrants in that time.<sup>109</sup> Moreover, he demonstrated uneasiness with the telephonic warrant procedure. Additionally, he admitted that was not

---

<sup>106</sup> *Id.* at 28.

<sup>107</sup> 9/30 RP at 26-27.

<sup>108</sup> *Id.* at 26-27.

<sup>109</sup> *Id.* at 56.

familiar with how to transmit information over the laptop computer ensconced in his police car.<sup>110</sup> Finally, when asked how to obtain a telephonic warrant, Dart simply talked about filling out forms.<sup>111</sup>

The total lack of consideration for a search warrant amounts to a per se rule against obtaining search warrants for a blood draw. The police never even considered the need for a search warrant once it was clear they would get a blood draw. The per se rule is obvious because the officers did not even know how to request telephonic warrants. Most blood draw cases occur after hours; thus, police placed in positions need to know how to request telephonic search warrants. If they do not have this knowledge, they will have no choice but to apply a per se rule, as was the case here.

This “standard procedure”<sup>112</sup> is precisely the type of per se rule that the Supreme Court condemned. The exigent circumstances exception requires a case-by-case approach using the totality of the circumstances. Such a standard is not met when the police fail to consider a search warrant. The additional revelations that no one even knew how to request a search warrant is conclusive evidence that a per se rule was applied against Mr. Raymundo in violation of the Fourth Amendment. Therefore, the results of the unconstitutional blood draw must be suppressed.

---

<sup>110</sup> *Id.* at 71-72.

<sup>111</sup> *Id.* at 73.

<sup>112</sup> Dart testified that it was standard procedure to send a suspect in for a blood draw. 9/30 RP at 54.

2. The warrantless blood draw violated the Fourth Amendment because exigent circumstances did not exist to justify the failure to obtain a warrant.

To determine whether an exception to the warrant requirement exists, look at the totality of the circumstances.<sup>113</sup> Each situation is evaluated on a case-by-case basis.<sup>114</sup> Indeed, courts must “evaluate each case of alleged exigency based ‘on its own facts and circumstances.’”<sup>115</sup> The State bears the burden to prove such an exception exists.<sup>116</sup>

Generally, the police need a warrant to effect a search; however, the presence of exigent circumstances constitutes an exception to the Fourth Amendment’s warrant requirement. Exigent circumstances occur when there is “compelling need for official action and no time to secure a warrant.”<sup>117</sup> Recognized examples of exigent circumstances include law enforcement’s need to provide emergency assistance to an occupant of a home,<sup>118</sup> engaging in “hot pursuit” of a fleeing suspect,<sup>119</sup> and entering a building to put out a fire or to investigate its cause.<sup>120</sup> The recognized

---

<sup>113</sup> *Brigham City v. Stuart*, 547 U.S. 398, 406, 126 S. Ct. 2000, 36 L. Ed. 2d 650 (2006); *State v. Tibbles*, 169 Wn.2d 364, 370, 236 P.3d 885 (2010).

<sup>114</sup> *McNeely*, 133 U.S. at 1559.

<sup>115</sup> *McNeely*, 133 S. Ct. at 1559 (quoting *Go-Bart Importing Co. v. United States*, 282 U.S. 344, 357, 51 S. Ct. 153, 75 L. Ed. 374 (1931)).

<sup>116</sup> *Tibbles*, 169 Wn.2d at 369.

<sup>117</sup> *Michigan v. Tyler*, 436 U.S. 499, 509, 98 S. Ct. 1942, 56 L. Ed. 2d 486 (1978).

<sup>118</sup> *Michigan v. Fisher*, 558 U.S. 45, 47-48, 130 S. Ct. 546, 175 L. Ed. 2d 410 (2009).

<sup>119</sup> *United States v. Santana*, 427 U.S. 38, 42-43, 96 S. Ct. 2406, 49 L. Ed. 2d 300 (1976).

<sup>120</sup> *Tyler*, 436 U.S. at 509-10.

exigent circumstance relevant here is preventing the imminent destruction of evidence.<sup>121</sup>

Washington courts, in analyzing Article I, section 7, agree that destruction of evidence can satisfy the exigent circumstances exception.<sup>122</sup> However, the Washington Supreme Court urges caution: “merely because one of these circumstances exists does not mean that exigent circumstances justify a warrantless search.”<sup>123</sup> “[M]ere convenience is not enough.”<sup>124</sup>

When the police invoke exigent circumstances and proceed to effect a warrantless search instead of obtaining a telephonic warrant, the focus is “the impracticality of obtaining a warrant.”<sup>125</sup> But the bottom line is “the circumstances must show the officer needed to act quickly.”<sup>126</sup>

In this case, the trial court recognized several facts triggering the exigent circumstances exception: the gravity of the case, the delay caused when the defendant left the scene, the need to transport the defendant to this hospital, and the dissipation of alcohol between the time of the accident and the blood draw.

---

<sup>121</sup> *Cupp v. Murphy*, 412 U.S. 291, 296, 93 S. Ct. 2000, 36 L. Ed. 2d 900 (1973).

<sup>122</sup> *State v. Smith*, 165 Wn.2d 511, 517, 199 P.3d 386 (2009).

<sup>123</sup> *Tibbles*, 169 Wn.2d at 370.

<sup>124</sup> *State v. Patterson*, 122 Wn.2d 731, 734, 774 P.2d 10 (1989).

<sup>125</sup> *State v. Rulan*, 97 Wn. App. 884, 889, 970 P.2d 821 (1999) (quoting *State v. Audley*, 77 Wn. App. 897, 905, 894 P.2d 1359 (1995)).

<sup>126</sup> *State v. Cardenas*, 146 Wn.2d 400, 408, 47 P.3d 127 (2002).

The only testimony at the suppression hearing regarding the length of time to obtain a telephonic warrant came from Dart. He said that it can take two or three hours. However, Dart also admitted that he had never actually obtained a telephonic warrant. Because his testimony was not sourced in personal knowledge, its veracity is questionable.

The trial court first invoked the gravity of the case as an exigent circumstance. Although this case was serious, avoiding the warrant requirement could not have helped the victim in any way. Just minutes after arriving at the accident scene, the fire department pronounced the victim dead. There was no “compelling need” for official action because there were no other outstanding emergencies related to this case. In fact, the seriousness of this case is a reason why the police should have requested a warrant.

Next, the trial court cited the delay caused when the defendant left the accident scene. Officer Prasad testified that it normally takes two to three hours to process a DUI.<sup>127</sup> The defendant asked a bystander to call 911 and then he walked back toward the overturned car.<sup>128</sup> However, the delay was insignificant. The police arrived at the scene at 12:43 A.M.<sup>129</sup>

---

<sup>127</sup> 9/30 RP at 33.

<sup>128</sup> It is unclear whether he tried to avoid detection or whether he was searching for help.

<sup>129</sup> See Findings of Fact/Conclusions of Law.

The K-9 Unit contacted the defendant at 12:52 A.M.<sup>130</sup> The record shows that, by not being precisely where the officer first looked, the defendant caused a nine-minute delay. Nine minutes is not an exigent circumstance and to matter-of-factly disregard the warrant requirement, especially when it usually takes these same police officers two to three hours to process a DUI.

The trial court also noted that a delay was caused when the police had to transport the defendant to the hospital. This justification is essentially an implementation of a per se rule, which the Supreme Court has ruled unconstitutional. The police will have to transport a suspect to the hospital or other facility every time they get a blood draw. Indeed, *McNeely* pointed out this very fact.<sup>131</sup> Because this justification will be present in every case regardless of circumstance, it amounts to a per se ruling that exigent circumstances exist in all blood-draw cases.

Furthermore, nothing prevents the police from requesting a search warrant while the suspect is being transported. In this case, several officers were present and some of them had time to stand around. In such an instance, “there would be no plausible justification for an exception to the warrant requirement.”<sup>132</sup>

---

<sup>130</sup> *Id.*

<sup>131</sup> *McNeely*, 133 S. Ct. at 1561.

<sup>132</sup> *Id.*

Finally, the trial court relied on the dissipation of alcohol in the blood stream. The Supreme Court recognized that this fact, in some instances, could qualify as an exigent circumstance when additional exigencies are present.<sup>133</sup> Even though the dissipation of alcohol in the blood stream *can* qualify as an exigent circumstances, an exigency still must exist to meet the exception to the warrant requirement. It *normally* takes two to three hours to obtain an alcohol measurement. Nothing about this case indicates that obtaining a warrant would have prevented the police from meeting this timeframe.

The justifications the trial court relied upon—other than the gravity of the incident—are time-sensitive considerations. However, this was not a “now or never” situation. Normally, in Tukwila, up to three hours elapse between the arrest and alcohol measurement.<sup>134</sup> Moreover, numerous officers responded to the accident, and some of them spent time just standing around.<sup>135</sup> Finally, Prasad testified that he did feel the urgent need to get the blood sample. These facts show that time was not an issue; no exigencies justified ignoring the Fourth Amendment.

Although the destruction of evidence can sometimes justify a warrantless search, in this case, the State did not show that exigent

---

<sup>133</sup> *Id.*

<sup>134</sup> 9/30 RP at 33.

<sup>135</sup> 9/30 RP at 26.

circumstances existed. Under the totality of the circumstances, the police had plenty of time to request a warrant for the blood draw. Even if obtaining a warrant would have taken several hours, this is almost the exact amount of time it normally takes for the police to get a blood draw. Finally, many of the delays were caused by the police themselves. Therefore, the trial court erred when it found that exigent circumstances exception was triggered.

### **C. The Trial Court Erred When It Admitted the Results of the Blood Test Without Proper Foundation.**

The trial court's decision to admit the blood test is reviewed for abuse of discretion.<sup>136</sup> "The trial court abuses its discretion when it admits evidence of a blood test result in the face of insufficient prima facie evidence."<sup>137</sup>

Before introducing blood results, the State must present prima facie evidence that the "chemicals and the blood sample are free from any adulteration which could conceivably introduce error to the test results."<sup>138</sup> Prima facie evidence is that which supports a logical and reasonable inference of the facts sought to be proven.<sup>139</sup>

---

<sup>136</sup> *State v. Brown*, 145 Wn. App. 62, 69, 184 P.3d 1284 (2008).

<sup>137</sup> *Brown*, 145 Wn. App. at 69.

<sup>138</sup> *State v. Wilbur-Bobb*, 134 Wn. App. 627, 630, 141 P.3d 665 (2006).

<sup>139</sup> RCW 46.61.506(4)(b).

“[A] blood sample analysis is admissible to show intoxication under RCW 46.61.502 only when it is performed according to WAC [Washington Administrative Code] requirements.”<sup>140</sup> The relevant WAC requires blood samples to be “preserved with an anticoagulant and an enzyme poison sufficient in amount to prevent clotting and stabilize the alcohol concentration.”<sup>141</sup> These enzymes and anticoagulants prevent clotting and preserve the alcohol concentration.<sup>142</sup>

This requirement is mandatory.<sup>143</sup> Only after the State makes a prima facie showing of these requirements may the jury determine the weight to be attached to the evidence.<sup>144</sup>

To lay proper foundation, the State is required to present evidence that *both* the anticoagulant and the enzyme poison are present inside the blood vial. In *Bosio*, the State introduced testimony that the chemical powder was in the vial.<sup>145</sup> The State laid sufficient foundation that the anticoagulant was present because, at trial, the blood was not coagulated. However, the State did not demonstrate the presence of the enzyme poison.<sup>146</sup> This omission resulted in the reversal of the vehicular assault

---

<sup>140</sup> *State v. Hultenschmidt*, 125 Wn. App. 259, 265, 102 P.3d 192 (2005).

<sup>141</sup> WAC 448-14-020(3)(b).

<sup>142</sup> *State v. Clark*, 62 Wn. App. 263, 270, 814 P.2d 222 (1991).

<sup>143</sup> *State v. Bosio*, 107 Wn. App. 462, 468, 27 P.3d 636 (2001).

<sup>144</sup> *Brown*, 145 Wn. App. at 69-70.

<sup>145</sup> *Bosio*, 107 Wn. App. at 468.

<sup>146</sup> *Id.*

conviction.<sup>147</sup> Moreover, in *Hultenschmidt*, the State failed to introduce evidence that the enzyme poison was present in the blood vial.<sup>148</sup> The State argued other evidence was sufficient to show that the blood tests reliable, but because it failed to actually prove that the enzyme poison was present in the vials the appellate court was compelled yet again to reverse and order a new trial.<sup>149</sup>

In this case, just as those cited above, the State did not introduce sufficient evidence to build a prima facie case that the enzyme poison was present in the blood vial. The State's toxicologist testified generally that the FDA regulates the manufacture of the blood vials.<sup>150</sup> The toxicologist referenced the existence of quality certificates attesting to the presence of the chemicals.<sup>151</sup> And the toxicologist mentioned the labels on vials showed that the vials contained a sufficient amount of each chemical.<sup>152</sup> However, the toxicologist admitted that he was unable to test the vials to ensure that the enzyme poison was present.<sup>153</sup>

---

<sup>147</sup> *Id.*

<sup>148</sup> *Hultenschmidt*, 125 Wn. App. at 266.

<sup>149</sup> *Id.*

<sup>150</sup> 10/8/13 RP at 51.

<sup>151</sup> *Id.* at 74.

<sup>152</sup> *Id.* at 76, 93.

<sup>153</sup> *Id.* at 77.

Personal knowledge is “one of the most basic requirements of the rules of evidence.”<sup>154</sup> The State’s toxicologist did not offer any testimony based from his personal knowledge that the vials contained the enzyme poison. The toxicologist demonstrated that the correct amount of anticoagulant was present because he could see that the blood was not clotted. However, the he failed to offer similar testimony regarding the enzyme poison.

Providing evidence that the enzyme poison is in the vial is necessary for a sufficient foundation. In *Brown*, the court of appeals ruled that the State’s foundation for a blood test was sufficient. The toxicologist testified that the vials provided by the manufacturer had powdery substances inside, the labels on the vial indicated that the correct chemicals were in the vials, *and* the enzyme poison was present because otherwise no alcohol would have been detected in the sample. In this case, the toxicologist’s testimony was similar except for one glaring omission: the toxicologist could not vouch for the presence of the enzyme poison.

The toxicologist, like the toxicologist in *Brown*, could have bridged the foundational gap by testifying that the level of alcohol proved that the enzyme poison was indeed present. However, the toxicologist did

---

<sup>154</sup> *Brown v. Keane*, 355 F.3d 82, 89-90 (2d Cir. 2004); *Shepard v. U.S.*, 290 U.S. 96, 101, 54 S. Ct. 22, 78 L. Ed. 196 (1933).

not do so. Thus, the State presented no evidence based on personal knowledge that the enzyme poison was inside the vial.

In this case, the State's toxicologist failed to offer any evidence based on first-hand knowledge. Although the expert read the labels on the vials and referenced the regulations, he did not provide sufficient testimony to lay proper foundation. Therefore, the trial court abused its discretion when it admitted the results of the blood test.

**D. The Hit and Run Conviction was not Supported by Sufficient Evidence.**

To determine whether sufficient evidence supports a conviction, the court views the evidence in the light most favorable to the State and decides whether any rational trier of fact could have still found guilt beyond a reasonable doubt.<sup>155</sup> A jury may not make inferences based upon speculation or conjecture.<sup>156</sup> Accordingly, the evidence that is in the record on appeal must establish that the defendant committed the crime charged beyond a reasonable doubt.<sup>157</sup>

The felony hit and run statute imposes duties upon a driver involved in an accident. First, the driver must remain at the "scene of such accident or as close thereto as possible . . . until he or she has fulfilled the

---

<sup>155</sup> *State v. Jackson*, 137 Wn.2d 712, 730, 976 P.2d 1229 (1999).

<sup>156</sup> *United States v. Nevils*, 598 F.3d 1158, 1167 (9th Cir. 2010).

<sup>157</sup> *State v. Huber*, 129 Wn. App. 499, 503, 119 P.3d 388 (2005).

requirements of subsection (3).”<sup>158</sup> Subsection (3) requires the driver to provide basic personal and insurance information and to assist any injured parties.<sup>159</sup> The statute does not require the driver to remain at the scene after satisfying the duties in subsection (3).

This point is demonstrated by *State v. Teuber*. In that case, the Defendant slammed into another car in a duplex parking lot. The people in the parked car went inside and called the police. The defendant left the car. The police arrived 5 minutes later and could not contact the defendant either by calling him or knocking on his door. The appellate court reversed the hit-and-run conviction because the defendant’s duty to provide information from the other party was relieved when the other party left the scene. Even though the defendant fled the scene, he did not commit a hit and run because he fled *after* his subsection (3) duties were extinguished.

1. The State did not produce sufficient evidence showing that Mr. Raymundo did not satisfy his obligation to give the specified information and to assist the injured person.

---

<sup>158</sup> RCW 46.52.020(1).

<sup>159</sup> RCW 46.52.020(3). “Unless otherwise provided in subsection (7) of this section the driver of any vehicle involved in an accident resulting in injury to or death of any person, or involving striking the body of a deceased person, or resulting in damage to any vehicle which is driven or attended by any person or damage to other property shall give his or her name, address, insurance company, insurance policy number, and vehicle license number and shall exhibit his or her vehicle driver's license to any person struck or injured or the driver or any occupant of, or any person attending, any such vehicle collided with and shall render to any person injured in such accident reasonable assistance, including the carrying or the making of arrangements for the carrying of such person to a physician or hospital for medical treatment if it is apparent that such treatment is necessary or if such carrying is requested by the injured person or on his or her behalf. Under no circumstances shall the rendering of assistance or other compliance with the provisions of this subsection be evidence of the liability of any driver for such accident.”

The State failed to produce any evidence that Mr. Raymundo did not satisfy the duties imposed by Subsection (3). Subsection (3) required Mr. Raymundo to provide his basic personal and insurance information to any injured parties. However, the evidence presented at trial suggests that Mr. Raymundo did indeed satisfy his duties.

By the time the police arrived, Mr. Raymundo had already contacted the authorities. Mr. Lower, a bus driver who happened to be in the area at the time, testified that when he happened upon the accident scene, he saw Mr. Raymundo with his “phone to his face.”<sup>160</sup> Moments later, Mr. Raymundo handed the phone over to Mr. Lower and asked him to direct the authorities to the location.<sup>161</sup> Mr. Lower described the location to the 911 operator and then abruptly hung up the phone.<sup>162</sup>

The testimony shows that Mr. Raymundo was on the phone with the authorities when the first witness saw him. No evidence implied that Mr. Raymundo did not have time to relay all the required information to the authorities before the witness, who had to drive to the accident scene, saw him.<sup>163</sup>

---

<sup>160</sup> 10/14 RP at 52.

<sup>161</sup> *Id.* at 53.

<sup>162</sup> *Id.*

<sup>163</sup> *Id.* at 52.

The State presented no other evidence describing Mr. Raymundo's actions immediately after the accident. A reasonable juror could not conclude from this evidence that Mr. Raymundo did not proffer the required information. Conversely, the evidence suggests that Mr. Raymundo was following his duty: he called 911 and then handed his phone to a bystander before he went back to the wrecked automobile. Although the 911 call would have conclusively answered this question, the State failed to produce it at trial.

Subsection 3 also imposes a duty on the driver to render "reasonable assistance" to anyone injured in the accident. The testimony showed that Mr. Raymundo was in the area of the overturned SUV for a few moments. He then walked up an embankment, dropped off his phone—while it was connected to 911, and walked back in the direction of the SUV.

The most reasonable inference from these facts is that during these two periods while he was in the vicinity of the car, Mr. Raymundo tried to offer reasonable assistance to his cousin. This evidence strongly implies that Mr. Raymundo provided what assistance he could. Even if Mr. Raymundo did not offer assistance of any kind, Mr. Hernandez was unconscious, moribund, and trapped underneath the automobile. Mr. Raymundo was incapable of offering any worthwhile assistance.

The defendant is not required to prove that he satisfied the duty; the State must prove that the defendant failed to satisfy his duty. Therefore, because Mr. Raymundo acted conscientiously by calling 911 and he had enough time to relay the required information to the authorities and to assist the injured person, the jury could not have inferred beyond a reasonable doubt that Mr. Raymundo did not relay the information required by statute. Therefore, the trial court should have granted the defense counsel's motion to dismiss the charge for insufficient evidence.

2. The State failed to produce sufficient evidence that Mr. Raymundo fled the accident scene.

Even if the court assumes Mr. Raymundo failed to comply with subsection 3, the State also failed to prove that Mr. Raymundo did not remain or return to the accident scene. The statute requires the driver to "return to, and in every event remain at" the accident scene.<sup>164</sup> The statute does not specify how close the driver must remain at the scene.

In this case, the witness saw Mr. Raymundo walk in the direction of the overturned SUV. However, when the responding officers arrived, they hardly searched for him. Instead, they assumed he fled the scene and called in the K-9 unit. The K-9 unit immediately found Mr. Raymundo very near the accident site (within 150-200 feet). Indeed, the police

---

<sup>164</sup> RCW 46.52.020(1).

located Mr. Raymundo within nine minutes of the first officer responding. Because he was very close to the accident site and he was seen walking toward (as opposed to running away from) the accident site, the State failed to prove that Mr. Raymundo left the scene.

Therefore, the State failed to produce sufficient evidence that Mr. Raymundo either failed to satisfy his statutory duty or fled the scene. As a result, Mr. Raymundo's conviction for hit and run must be dismissed.

## **VI. CONCLUSION**

For the reasons listed above, the Court should reverse Mr. Raymundo's convictions for Vehicular Homicide and Hit and Run.

Dated June 23, 2014



Mitch Harrison  
WSBA#43040  
Attorney for Appellant



Carl Schremp  
WSBA#46604  
Attorney for Appellant

**PROOF OF SERVICE**

1. On June 23, 2014, I filed this document with the Court of Appeals, Division One, via US Mail

Court of Appeals, Division I  
600 University St.  
One Union Square  
Seattle, WA 98101-1176

2. On June 23, 2014, I sent a copy of this document to the King County Prosecutor via US Mail

King County Prosecuting Attorney  
Appellate Unit  
516 3<sup>rd</sup> Ave.  
Seattle, WA 98104

3. On June 23, 2014, I sent a copy of this document to Samuel Raymundo via US Mail

Samuel Raymundo #370194  
Washington State Penitentiary  
1313 North 13<sup>th</sup> Ave.  
Walla Walla, WA 99362

DATED June 23, 2014



Carl Schremp

FILED  
COURT OF APPEALS DIV 1  
STATE OF WASHINGTON  
2014 JUN 24 PM 12:31