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SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON, Respondent,

v.

LARRY DEAN TYLER, Petitioner.

SUPPLEMENTAL BRIEF OF RESPONDENT

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I. INTRODUCTION

This supplemental brief expands upon arguments contained in the brief of respondent. The State's decision not to address certain issues in this supplemental brief should not be considered as a concession, but should be interpreted as the State's determination that the unaddressed issues are adequately discussed in its other briefs.

II. COUNTER STATEMENT OF THE ISSUES

1. Whether this Court should overrule its prior impound inventory cases when the defendant has not established that those cases are wrong or harmful?

2. Whether the trial court correctly concluded that an impound inventory that is completed only after an officer exhausts all reasonable alternatives to impound, is not a pretext for an investigative search?

III. STATEMENT OF FACTS

Jefferson County Sheriff Deputy Brett Anglin has served as a patrol officer for over 10 years. RP 9. During his service as a police officer, the rules governing searches of vehicles dramatically changed. On April 23, 2009, he referenced the changing law in an e-mailed request for training as a K-9 officer. CP 36. Deputy Anglin's e-mail expressed his frustration with the new rules related to search incident to arrest, and reaffirmed his understanding that an inventory search may not be conducted of a vehicle

until after “the person [is afforded] the chance to contact someone else” to move the vehicle and only if the vehicle is not safely off the roadway. *Id.*

Nearly 7-months after sending the e-mail to his supervisors, Deputy Anglin was on routine patrol, traveling west on Highway 104. RP 10. A speeding vehicle traveling the opposite direction caught Deputy Anglin’s attention. RP 10. Deputy Anglin made a U-turn and got behind the speeding vehicle. RP 10. He also checked the vehicle’s registration, determining that the registered owner was a female whose driver’s license was suspended. RP 10. Since Deputy Anglin observed that the vehicle’s current operator was a male, Deputy Anglin stopped the vehicle for the sole purpose of addressing the driver’s speed. RP 10.

The driver brought the vehicle to stop on Highway 104, a quarter mile from the Hood Canal Bridge, just one foot from the fog line. RP 10, 13. The location of the stop is the busiest traffic point in Jefferson County, with a single lane which transitions from a 60 mph speed zone to a 40 mph zone. RP 11.

Deputy Anglin contacted the driver and requested the driver’s license. RP 11. The driver, who was subsequently identified as the defendant, Larry Dean Tyler, handed a Medicare card to the deputy, stating that he did not have a driver’s license. RP 11, 30. Deputy Anglin confirmed that Tyler’s license was suspended. RP 12. Deputy Anglin arrested Tyler for driving

while license suspended (DWLS), handcuffed him, searched him, and secured him in the back of his patrol car.

Deputy Anglin, who recognized the passenger from past contacts, believed that the passenger had several outstanding warrants. RP 12. While confirming that the passenger was indeed wanted, Deputy Anglin also determined that the passenger's driver's license was suspended. RP 12. The passenger was not, however, arrested as the warrants were not "extraditable." RP 13.

Deputy Anglin, who had observed the passenger attempt to conceal something near his legs when the Deputy first approached the vehicle, requested permission to search the vehicle from both Tyler and Tyler's passenger. RP 11, 13, 17-18. Both men denied Deputy Anglin's request. RP 13, 19. This refusal terminated Deputy Anglin's investigation. RP 15.

Deputy Anglin shifted his focus to the proper disposition of the car Tyler had been driving. The vehicle's location posed a danger to the motoring public.¹ RP-13. Deputy Anglin explored the options for removing

¹Judge Taylor, a life-time resident of the North Olympic Peninsula, described the location of the stop as follows:

SR 104 is busy and congested at this location as vehicles decelerate to approach the bridge; the intersection at the west end of the bridge is a frequent accident scene; and cars are accelerating and passing each other as they leave the bridge and proceed west on the two lanes provided for westbound traffic. It is not a safe place to leave an abandoned vehicle, adding to the congestion and restricted sight lines, and making the vehicle vulnerable to vandalism and theft.

CP 24.

the vehicle from its present unsafe location, but all proved fruitless.

Tyler did not know anyone who could respond to the scene within 30 minutes to drive the borrowed vehicle away. RP 19.² The registered owner of the vehicle could not collect the vehicle as she was incarcerated in Port Angeles. RP 19, 38. Tyler's passenger could not drive the borrowed vehicle away as he did not possess a valid license. RP 12, 29. Tyler's passenger, who was provided access to Tyler's cell phone, was unable to locate anyone who could report to the scene to drive the borrowed vehicle away. RP 14-15. Deputy Anglin, therefore, was left with no alternative but impound.³

Deputy Anglin called for a tow truck. RP 16. He then began to complete the standard State Patrol tow form.⁴ RP 16. This form includes information regarding the make, model, mileage, license number, VIN, lienholders, owner, location and time of seizure, a description of any damage to the vehicle, and an inventory of the contents. RP 25.⁵ This form is a

²The 30-minute window is comparable to the time it usually takes a tow truck to respond to the scene. RP 26. Thirty minutes is also the maximum time that the legislature expects a police officer to remain at the scene for a tow truck, when a vehicle is impounded pursuant to RCW 46.55.360. *See* RCW 46.55.360(1)(b)(i) (an officer may leave before the tow truck arrives if the police officer has "[w]aited thirty minutes after the police officer contacted the police dispatcher requesting a registered tow truck operator and the tow truck responding has not arrived").

³Tyler concedes that the impound was reasonable under the circumstances. *See* CP 37.

⁴RCW 46.55.075 requires all law enforcement agencies to use the form developed by the Washington State Patrol.

⁵The tow form completed on November 12, 2009, by Deputy Anglin may be found at CP 19. The form is reproduced in appendix A.

record of the property that the tow truck driver removes from the scene.⁶ RP 25-26. The inventory protects against theft or accusations of theft. RP 17, 21. The sheriff's policy is that inventories will be performed whenever a vehicle will be impounded. RP 22-23.

During the inventory of the vehicle's contents, Deputy Anglin observed two expensive amplifiers in the back seat. RP 16, 38. These amplifiers were not attached to the vehicle in any manner. RP 21. Deputy Anglin found a clear plastic bag that contained powdered methamphetamine under the driver's seat. RP 16. He found a small, closed metal container under the driver's seat which contained a brown wad of cotton with a substance that appeared to be heroin. RP 16.

The vehicle Tyler was driving was released to a private tow company, All City Towing, at 1:00 p.m. CP 19. This was 30 minutes after Deputy Anglin first observed Tyler speeding past in a borrowed vehicle. RP 14.

Tyler was charged with one count of possession of Methamphetamine, one count of use of drug paraphernalia, and one count of DWLS. CP 1. Tyler moved to suppress the Methamphetamine and the drug paraphernalia⁷ on the grounds that the impound was a pretext for a

⁶RCW 46.55.090 requires the tow truck company to protect the personal property that was contained in the towed vehicle and to maintain the vehicle "in substantially the same condition as they existed before being towed."

⁷The State did not charge Tyler with possession of heroin, as the opening of the small closed container possibly exceeded the scope of an inventory search. *See generally State v. Houser*, 95 Wn.2d 143, 158-59, 622 P.2d 1218 (1980) (absent owner consent or exigent

warrantless search. CP 6. Judge Taylor denied the motion finding that:

Any evidence of using the impound as a pretext for a warrantless search is rebutted by the officer's offer to let the passenger call for help, once he knew the owner was in jail and not available to assist to retrieve her vehicle.

The Court is satisfied that the impound was reasonable and not a pretext for an exploratory search. The arresting officer had compelling reasons to impound the vehicle, and having done so, it was incumbent upon him to inventory its content before turning it over to the tow truck driver.

CP 25.

IV. ARGUMENT

A. This Court's Current Impound Inventory Law is Neither Incorrect nor Harmful

Article I, section 7 permits warrantless searches under certain "jealously and carefully drawn' exceptions" to the warrant requirement. *State v. Hendrickson*, 129 Wn.2d 61, 70, 917 P.2d 563 (1996) (quoting *State v. Houser*, 95 Wn.2d 143, 149, 622 P.2d 1218 (1980) (quoting *Arkansas v. Sanders*, 442 U.S. 753, 759, 99 S. Ct. 2586, 61 L. Ed. 2d 235 (1979))). The exceptions fall "into six categories: (1) consent; (2) exigent circumstances; (3) search incident to a valid arrest; (4) inventory searches; (5) plain view;

circumstances, an officer should inventory closed containers as a sealed unit). It is unclear whether the rule announced in *Houser* was based upon article 1, section 7 or the Fourth Amendment, because the cases cited in support of the rule were federal court cases. See *Houser*, 95 Wn.2d at 157-158 (citing *Arkansas v. Sanders*, 442 U.S. 753, 99 S. Ct. 2586, 61 L. Ed. 2d 235 (1979), and *United States v. Bloomfield*, 594 F.2d 1200-03 (8th Cir. 1979)).

Seven years after *Houser* was issued, the United States Supreme Court clarified that the Fourth Amendment is not violated by an inventory of the contents of closed containers contained inside an impounded vehicle. See generally *Colorado v. Bertine*, 479 U.S. 367, 107 S. Ct. 738, 93 L. Ed. 2d 739 (1987).

and (6) *Terry* investigative stops, *Terry v. Ohio*, 392 U.S. 1, 88 S. Ct. 1868, 20 L. Ed. 2d 889 (1968).” *State v. White*, 135 Wn.2d 761, 769 n. 8, 958 P.2d 982 (1998).⁸

Impound searches, one of the well established exceptions under both article I, section 7 of the Washington Constitution and the Fourth Amendment,⁹ serve many important non-investigatory purposes. An inventory search of an automobile is performed for the purposes of (1) finding, listing, and securing from loss during detention property belonging to a detained person; and (2) protecting police and temporary storage bailees from liability due to dishonest claims of theft. *State v. Gluck*, 83 Wn.2d 424, 518 P.2d 703 (1974); *State v. Montague*, 73 Wn.2d 381, 385-87, 438 P.2d 571 (1968). *Accord South Dakota v. Opperman*, 428 U.S. 364, 359, 96 S. Ct. 3092, 49 L. Ed. 2d 1000 (1975).

To ensure that an inventory search is not a pretext for an evidentiary search, this Court requires proof that the impoundment either be authorized by statute or ordinance or based upon reasonable cause. In addition, an

⁸The State acknowledges the dramatic sea change regarding search incident to arrest that began with *Arizona v. Gant*, 556 U.S. 332, 129 S. Ct. 1710, 173 L. Ed. 2d 485 (2009), and has continued through this Court’s recent opinion in *State v. Snapp*, 174 Wn.2d 177, 275 P.3d 289 (2012). The underpinning of the inventory search exception, however, is unaffected by the *Gant* decision. *See, e.g., United States v. Frasher*, 632 F.3d 450, 455 (8th Cir.), *cert. denied*, 132 S. Ct. 278 (2011) (*Gant*’s reasoning does not undermine the inventory search exception); *Moskey v. State*, 333 S.W.3d 696, 702 (Tex. App. 2010) (*Gant* does not alter the rules for valid inventory searches).

⁹*See, e.g., South Dakota v. Opperman*, 428 U.S. 364, 96 S. Ct. 3092, 49 L. Ed. 2d 1000 (1975); *State v. White*, 135 Wn.2d 761, 770, 958 P.2d 982 (1998).

officer must explore reasonable alternatives to impoundment. *See generally State v. Simpson*, 95 Wn.2d 170, 189, 622 P.2d 1199 (1980).¹⁰

The first alternative is to leave the vehicle alongside the roadway¹¹ or to “allow the driver or other person in charge of the vehicle to move the vehicle to a position off the roadway,” RCW 46.55.113(2)(a).¹² *See, e.g., State v. Sweet*, 44 Wn. App. 226, 236, 721 P.2d 560, *review denied*, 107 Wn.2d 1001 (1986). This alternative depends, in part, upon the driver having the capacity¹³ and the authority to tender a valid waiver of liability.¹⁴ This

¹⁰The Fourth Amendment does not require officers to explore or exhaust reasonable alternatives to impound prior to conducting an inventory search. *See generally Colorado v. Bertine*, 479 U.S. 367, 107 S. Ct. 738, 93 L. Ed. 2d 739 (1987).

¹¹In some cases, leaving the vehicle alongside the roadway will delay, but not avert the need for an impound. *See* RCW 46.55.085 (a vehicle that is left alongside the roadway and that neither constitutes an obstruction to traffic nor jeopardizes public safety may be impounded after 24-hours.)

¹²This option, of course, is only available when the driver or other person are validly licensed and not under arrest. *Cf. State v. Menegar*, 114 Wn.2d 304, 309, 787 P.2d 1347 (1990), *overruled on other grounds by State v. Hill*, 123 Wn.2d 641, 645, 870 P.2d 313 (1994) (an officer may appropriately determine if a passenger has a valid driver's license prior to allowing the passenger to drive an intoxicated driver's vehicle). If an officer were required to allow an arrested individual to regain control of the vehicle, a significant number of high speed chases could be contemplated.

¹³Drivers under the age of eighteen will rarely own the vehicle they are driving. *See* RCW 46.12.755(1) (“A person under the age of eighteen may not be the registered or legal owner of a motor vehicle unless the: (a) Motor vehicle was previously registered in the person's name in another jurisdiction while a resident of that jurisdiction; (b) Person is on active military duty with the United States armed forces; or (c) Person is, in effect, emancipated.”). Individuals under the age of eighteen generally may not be legally bound by a contract and may not sue or be sued without a guardian ad litem. *See generally* RCW 26.28.015.

¹⁴In some cases, such as the present one, the driver of the vehicle may not be the registered owner of the vehicle, the owner's spouse, or a person who can establish a lawful right to the possession of the vehicle and/or the vehicle's contents. A waiver from such a person will not preclude a suit from the vehicle's owner. *Cf. Scott v. Pac. W. Mt. Resort*, 119 Wn.2d 484, 834 P.2d 6 (1992) (a parent does not have legal authority to waive a child's own future cause of action for personal injuries resulting from a third party's negligence).

alternative also requires that leaving the vehicle at the scene will not constitute an obstruction to traffic and will not jeopardize public safety.¹⁵ This alternative was unavailable in the instant case as neither requirement could be satisfied.

The second alternative is to allow a validly licensed driver to remove the vehicle. Although it is doubtful that Tyler, who was not the owner of the vehicle, could release the vehicle into the care of another, this alternative was fully explored by Deputy Anglin. Only after Tyler's passenger failed to locate a licensed driver, who could remove the vehicle in a timely manner, did Deputy Anglin request a tow truck.

Once an impound is justified by the circumstances, the police officer shall conduct an inventory of the vehicle's contents. *Cf.* RCW 46.55.360(b) (officer to leave an inventory in vehicle when it is impounded and the officer cannot wait for the tow truck operator to arrive). Permission of the driver is required if the officer seeks access to the trunk or to closed containers. *See State v. White, supra* (consent needed to inventory contents of a locked trunk);¹⁶ *State v. Houser, supra* (containers that may be inventoried as a

¹⁵In addition to creating congestion, the Legislature has determined that leaving a vehicle in place following the arrest of an impaired driver poses an unacceptable risk to the public. *See* RCW 46.55.350 (driver may still be impaired after being cited and released).

¹⁶Consent is not needed when manifest necessity exists. *White*, 135 Wn.2d at 772. The presence of explosive chemical fumes may present just such a manifest necessity. *See, e.g., State v. Ferguson*, 131 Wn. App. 694, 128 P.3d 1271 (2006), *review denied*, 159 Wn.2d 1001 (2007)..

unit).¹⁷ The owner of the vehicle, if present, may waive the protections of an inventory.¹⁸ See *White*, 135 Wn.2d at 771 n. 11 (citing *State v. Williams*, 102 Wn.2d 733, 743, 689 P.3d 1065 (1984)). A waiver of the inventory of the passenger compartment was unavailable in the instant case, as the owner of the vehicle Tyler was driving, was in jail in Clallam County.

Tyler urges this Court to require consent from the driver of a vehicle before conducting an impound inventory search. Granting Tyler's request would eliminate impound inventory searches and would leave police and private tow truck operators totally unprotected from false claims of loss or damage. Granting Tyler's request would eliminate impound inventory searches, replacing them solely with consent searches. Granting Tyler's request would require this Court to abandon many of its prior decisions.

Stare decisis “promotes the evenhanded, predictable, and consistent development of legal principles, fosters reliance on judicial decisions, and contributes to the actual and perceived integrity of the judicial process.”
Keene v. Edie, 131 Wn.2d 822, 831, 935 P.2d 588 (1997) (quoting *Payne v.*

¹⁷Consent is not needed when “police have reason to believe a container ‘holds instrumentalities which could be dangerous even when sitting idly in the police locker.’” *Houser*, 95 Wn.2d at 158-59 (quoting *United States v. Bloomfield*, 594 F.2d 1200, 1203 (8th Cir. 1979)). Unfortunately, even benign appearing containers can hold a loaded weapon that might accidentally discharge. See, e.g., Girl shot at Bremerton school stabilizing after 5th surgery, Tacoma News Tribune, 2/29/12, available at <http://www.thenewstribune.com/2012/-02/29/2046066/bremerton-girl-8-who-was-shot.html> (last accessed 4/12/12).

¹⁸No case has yet established the validity of the owner's waiver. The protection offered by the release to both the police and the private tow truck operator may prove illusory, as the owner is likely to claim that he only signed the document under duress.

Tennessee, 501 U.S. 808, 827, 111 S. Ct. 2597, 115 L. Ed. 2d 720 (1991)).

Under the doctrine of stare decisis, this Court will reverse itself on an established rule of law only upon a showing that the rule is incorrect and harmful. *State v. Ray*, 130 Wn.2d 673, 678, 926 P.2d 904 (1996).. A decision is harmful when it has a detrimental effect on the public interest. *State v. Stiers*, 174 Wn.2d 269, 276, 274 P.3d 358 (2012). Tyler has not established that his proposed rule, which would essentially eliminate inventory searches, is in the public interest.

First, an inventory-with-consent rule was specifically rejected by the United States Supreme Court as not addressing all of the concerns that support inventory searches.

The “consent” theory advanced by [Tyler] rests on the assumption that the inventory is exclusively for the protection of the car owner. It is not. The protection of the municipality and public officers from claims of lost or stolen property and the protection of the public from vandals who might find a firearm. . . are also crucial.

Opperman, 428 U.S. at 376 n. 10.

Second, Tyler’s claim that consent is an absolute prerequisite to a lawful inventory of the passenger compartment rather than one of many factors to be considered by the court in determining the reasonableness of an impound is based solely upon dicta¹⁹:

¹⁹See *United States v. Wanless*, 882 F.2d 1459, 1468 (9th Cir. 1989) (Wright J., dissenting) (consent passage in *Williams* is only dicta); *State v. Tyler*, 166 Wn. App. 202, 211-12, 269 P.3d 379, review granted, 174 Wn.2d 1005 (2012).

However, even if impoundment had been authorized, it is doubtful that the police could have conducted a routine inventory search without asking petitioner if he wanted one done. The purpose of an inventory search is to protect the police from lawsuits arising from mishandling of personal property of a defendant. Clearly, a defendant may reject this protection, preferring to take the chance that no loss will occur. *See generally United States v. Lyons*, 706 F.2d 321, 335 n. 23 (D.C. Cir. 1983).

Williams, 102 Wn.2d at 743.

This *dicta* is unsupported by the federal case it references, as *Lyons* dealt with a warrantless post-arrest search of the defendant's motel room. The *Lyons*' court determined that the justifications for an inventory search as stated in *Opperman* simply did not apply to a motel room, as there is no necessity for the police to remove the defendant's possessions from the room. It is unlikely that the defendant's property would have been vulnerable to vandalism or theft if the police simply vacated the premises and discontinued rental payments. Property left behind would be the responsibility of the motel, which likely would store the items until the defendant could redeem them. If the motel failed to keep track of the belongings, there is no basis upon which to assign civil liability to the police officers. *Lyons*, 706 F.2d at 335 n. 21. Since there is no evidence that the defendant's property would be better protected in police custody than in the custody of the motel, the *Lyons* court held that the owner of the property, if present, should be given the final say. *Lyons*, 706 F.2d at 335.

In a gratuitous footnote, the *Lyons*' court noted that "[m]ost courts presented with the issue have concluded that a warrantless inventory search of an impounded automobile is unconstitutional if the owner is present and is not consulted." *Lyons*, 706 F.2d at 335 n. 23. The statement is supported by citations to four cases in support of the proposition and two cases in opposition to the proposition. None of the "consent jurisdictions" cited by *Lyons* make the driver's consent a prerequisite to a valid inventory. Rather, consent is merely one factor in a totality of the circumstances analysis. *See, e.g., United States v. Wilson*, 636 F.2d 1161, 1165-66 (8th Cir. 1980) (identifying all the "particular facts of the case", that made the search of the defendant's locked trunk unreasonable); *State v. Killcrease*, 379 So. 2d 737, 739 (La.1980) (listing factors, including whether the owner was asked for his consent and whether the owner was willing to waive his rights to bring a civil action against the police, which are significant in determining whether an inventory search was merely a subterfuge for an investigative search); *State v. Mangold*, 82 N.J. 575, 414 A.2d 1312, 1317-18 (1980) (whether the owner was given a say in the disposition of the vehicle's contents is a factor to be considered); *State v. Goff*, 166 W.Va. 47, 272 S.E.2d 457, 460 (W. Va. 1980) (in *dicta* mentioning that the owner should be offered alternatives to impound).

At least half of the “consent jurisdictions” cited by *Lyons* have found vehicle inventory searches were properly conducted even though the owner was not asked for permission. *See, e.g., United States v. Agofsky*, 20 F.3d 866, 872-73 (8th Cir.), *cert. denied*, 513 U.S. 949 (1994); *United States v. Maier*, 691 F.2d 421 (8th Cir. 1982); *State v. Escoto*, 41 So. 3d 1160, 1164 (La. 2010); *State v. Sims*, 426 So.2d 148, 154 (La. 1983).

Third, the *Williams dicta* and the cases it is based upon create a “waiver option” rather than a “consent requirement.” Consistent with this understanding, the cases limit the waiver option to cases in which the vehicle’s owner is present. *See White*, 135 Wn.2d at 771 n. 11 (“In *Williams*, the court held police may not conduct a routine inventory search following the lawful impoundment of a vehicle without asking the owner, if present, if he or she will consent to the search.”); *Lyons*, 706 F.2d at 335 n. 23 (“Most courts presented with the issue have concluded that a warrantless inventory search of an impounded automobile is unconstitutional if *the owner* is present and is not consulted.” [Emphasis added.]). Limiting the ability to forego the protections of an inventory to the owner of the vehicle is prudent, as only the owner may waive the ability to seek civil redress against the police officers or private tow truck operators. Tyler, who was not the owner of the vehicle, could not have provided a valid waiver of liability to Deputy Anglin or to All City Towing. *See* CP 19. An additional ground for not allowing a non-owner

to waive the protections of an inventory, is that a non-owner driver is “not in a position to know whether there were items of personalty within the automobile which the owner would want the police to inventory for safekeeping.” *United States v. Edwards*, 577 F.2d 883, 894 n. 23 (5th Cir. 1978).

Fourth, decisions of this Court issued prior to *Williams* evaluated the propriety of impound inventories under a totality of the circumstances. *See, e.g., Simpson*, 95 Wn.2d at 191 (concluding, based upon all the facts, that the officer’s real purpose in conducting the inventory of the vehicle was investigative); *Montague*, 73 Wn.2d at 389-90 (distinguishing between a reasonable and lawful inventory procedure and an unauthorized exploratory search requires consideration of all the surrounding circumstances). Nothing in the *Williams* opinion indicates an intent to abandon the totality of the circumstances test.

The totality of the circumstances test has adequately protected personal privacy as police officers are well aware that our courts have no hesitancy in suppressing evidence of crime, when the impoundment and inventory of the vehicle is resorted to as a device and pretext for making a general exploratory search of a car without a search warrant. *White*, 135 Wn.2d at 770; *Montague*, 73 Wn.2d at 385. Deputy Anglin clearly understood this, indicating in his e-mail that an impound cannot be conducted

until all reasonable alternatives have been exhausted. CP 36. Deputy Anglin's conduct on November 12, 2008, was in accord with this understanding.

B. The Trial Court Properly Found That the Deputy Anglin Did Not Conduct the Inventory Search for the Purpose of Investigation

Whether an inventory search was conducted in bad faith or for the purpose of an investigation is determined by looking at the totality of the circumstances. *See generally, Simpson*, 95 Wn.2d at 191; *Montague*, 73 Wn.2d at 389-90. A list of non-exclusive factors that may assist in determining whether a "true inventory search" was conducted include:

(1) Whether the vehicle could not have remained safely where it was located; (2) whether the search was conducted in the field; (3) whether a tow truck was called before the search commenced; (4) whether formal impoundment procedures were followed; (5) whether the vehicle operator was asked if he consented to a search, if the car contained any valuables, or if he would consent to a waiver of the protections afforded by an inventory search; (6) whether the operator was given an opportunity to make arrangements for someone to pick up the vehicle for them.

Escoto, 41 So.3d at 1163.

In the instant case, Tyler concedes that the vehicle could not have remained safely at its current location. CP 24-25, 37. The inventory was conducted at the roadside, utilizing the statutorily mandated inventory form, after the tow truck was called. CP 19; RP 16, 22-23, 25-26; RCW 46.55.075.

Deputy Anglin did not call for a tow truck until after he determined that the vehicle's owner was unable to retrieve the vehicle in a reasonable period of time due to her incarceration, that the passenger did not have a valid license, that the driver did not know anyone who could take control of the vehicle within a 30 minute period, and only after the passenger unsuccessfully phoned a number of people looking for a licensed driver who could move the vehicle. *See* RP 12, 14-15, 19, 29, 38. The vehicle operator could not tender a valid waiver of liability as he was not the owner of the vehicle, and there were valuable, unattached, stereo components in the back seat area. RP 16, 38.

All of these factors fully support Judge Taylor's conclusions that: Any evidence of using the impound as a pretext for a warrantless search is rebutted by the officer's offer to let the passenger call for help, once he knew the owner was in jail and not available to assist to retrieve her vehicle.

The Court is satisfied that the impound was reasonable and not a pretext for an exploratory search. The arresting officer had compelling reasons to impound the vehicle, and having done so, it was incumbent upon him to inventory its content before turning it over to the tow truck driver.

CP 25.

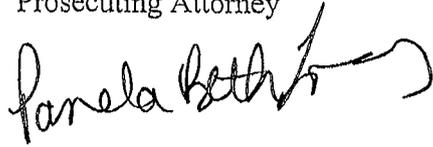
V. CONCLUSION

The State respectfully requests that this Court affirm Tyler's conviction for possession of Methamphetamine.

Dated this 12th day of July, 2012.

Respectfully Submitted,

Scott Rosekrans
Prosecuting Attorney

A handwritten signature in black ink, appearing to read "Pamela B. Loginsky". The signature is written in a cursive style with a large, sweeping flourish at the end.

Pamela B. Loginsky, WSBA 18096
Special Deputy Prosecuting Attorney

PROOF OF SERVICE

I, Pamela B. Loginsky, declare that I have personal knowledge of the matters set forth below and that I am competent to testify to the matters stated herein.

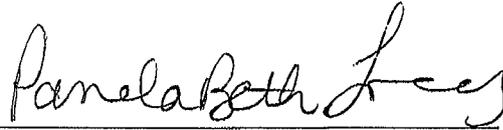
On the 12th day of July, 2012, I deposited in the mails of the United States of America, postage prepaid, a copy of the document to which this proof of service is attached in an envelope addressed to:

James L. Reese, III
Attorney at Law
612 Sidney Avenue
Port Orchard, WA 98366

On the 12th day of July, 2012, I also e-mailed a copy of the document to which this proof of service is attached to jameslreese@hotmail.com.

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

Signed this 12th day of July, 2012, at Olympia, Washington.

A handwritten signature in cursive script that reads "Pamela B. Loginsky". The signature is written in black ink and is positioned above a horizontal line.

Pamela B. Loginsky, WSBA No. 18096

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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF JEFFERSON

STATE

Plaintiff/Petitioner,

vs.

Larry Tyler

Defendant/Respondent:

Case No.: 09-1-197-4

Exhibit

OFFICE RECEPTIONIST, CLERK

To: Pam Loginsky; jameslreese@hotmail.com
Cc: Scott Rosekrans; Tom Brotherton
Subject: RE: State v. Tyler, No. 87104-3

Rec. 7-12-12

Please note that any pleading filed as an attachment to e-mail will be treated as the original. Therefore, if a filing is by e-mail attachment, it is not necessary to mail to the court the original of the document.

From: Pam Loginsky [<mailto:Pamloginsky@waprosecutors.org>]
Sent: Thursday, July 12, 2012 11:54 AM
To: OFFICE RECEPTIONIST, CLERK; jameslreese@hotmail.com
Cc: Scott Rosekrans; Tom Brotherton
Subject: State v. Tyler, No. 87104-3

Dear Clerk and Counsel:

Attached for filing is the State's Supplemental Brief. Please let me know if you should encounter any difficulty in opening the attachment.

Sincerely,

Pam Loginsky
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