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Supreme Ct. No. 90188-1

IN THE SUPREME COURT OF THE STATE OF
WASHINGTON

STATE OF WASHINGTON, Respondent,

v.

CHAD EDWARD DUNCAN, Petitioner.

STATE'S ANSWER TO THE AMICUS CURIAE BRIEFS

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STATUTES

RCW 9.41.3452-4

RULES

RAP 2.5(a)1

A. INTRODUCTION

The State will respond to the amicus curiae briefs of the Washington State Patrol and the Washington Association of Prosecuting Attorneys.

The State will not be answering the amici curie brief of ACLU of Washington, Center for Justice, Columbia Legal Services, Washington Association of Criminal Defense Lawyers, and Washington Defender Association, as the State will simply be incorporating and relying on the State's prior briefing in this case. The State maintains the position that RAP 2.5(a) provides appellate courts with discretion whether to review legal financial obligation (LFO) challenges raised for the first time on appeal, pursuant to State v. Blazina, 182 Wn.2d 827, 344 P.3d 680 (2015).

B. ISSUE RAISED BY AMICUS CURIAE BRIEFS

1. Is a protective sweep of a vehicle to remove firearms prior to releasing the vehicle to a tow driver or another person lawful pursuant to the community caretaking exception to the warrant requirement?

C. STATEMENT OF THE CASE

The facts of this case are discussed in detail in the briefs previously filed by the State and in the Court of Appeals opinion, State v. Duncan, 180 Wn. App. 245, 327 P.3d 699 (2014), and will not be addressed here.

D. ARGUMENT

1. **A protective sweep of a vehicle to remove firearms prior to releasing the vehicle to a tow driver or another person is lawful pursuant to the community caretaking exception to the warrant requirement.**

An officer may be derelict in his duty if he does not examine a vehicle before rendering it to the tow truck driver. See State v. Patterson, 8 Wn. App. 177, 504 P.2d 1197 (1973). In State v. Tyler, 177 Wn.2d 690, 302 P.3d 165 (2013), this Court noted that the Washington State Patrol was required to take appropriate steps to ready a vehicle for towing once impoundment is the only reasonable course left. See Tyler, 177 Wn.2d at 709 (“Impounding the vehicle without inventorying its contents could expose the property within to danger or theft...”).

Furthermore, an officer must now comply with RCW 9.41.345. This law became effective July 24, 2015. It mandates that an officer go through a specific protocol prior to releasing a firearm to an individual:

(1) Before a law enforcement agency returns a privately owned firearm, the law enforcement agency must: (a) Confirm that the individual to whom the firearm will be returned is the individual from whom the firearm was obtained or an authorized representative of that person; (b) Confirm that the individual to whom the firearm will be returned is eligible to possess a firearm pursuant to RCW 9.41.040; (c) Ensure that the firearm is not otherwise required to be

held in custody or otherwise prohibited from being released; and (d) Ensure that twenty-four hours have elapsed from the time the firearm was obtained by law enforcement.

RCW 9.41.345(1). The officer can only release the firearm if the above requirements are met. Id.

In addition, there are specific notification requirements mandated by RCW 9.41.345:

(2) (a) Once the requirements in subsections (1) and (3) of this section have been met, a law enforcement agency must release a firearm to the individual from whom it was obtained or an authorized representative of that person upon request without unnecessary delay. (b) (i) If a firearm cannot be returned because it is required to be held in custody or is otherwise prohibited from being released, a law enforcement agency must provide written notice to the individual from whom it was obtained within five business days of the individual requesting return of his or her firearm and specify the reason the firearm must be held in custody. (ii) Notification may be made via email, text message, mail service, or personal service. For methods other than personal service, service shall be considered complete once the notification is sent.

(3) If a family or household member has requested to be notified pursuant to section 1 of this act, a law enforcement agency must: (a) Provide notice to the family or household member within one business day of verifying that the requirements in subsection (1) of this section have been met; and (b)

Hold the firearm in custody for seventy-two hours from the time notification has been provided.

RCW 9.41.345(2), (3). These statutory obligations placed upon law enforcements officers are further reasons why officers must be able to secure firearms prior to releasing a vehicle to a tow truck driver or other authorized person. The goal behind RCW 9.41.345 is to keep firearms from getting in the wrong hands, such as the hands of a convicted felon or someone who the gun doesn't belong to. This is an essential part of an officer's job -- to keep the public safe, and part of an officer's community caretaking obligations.

E. CONCLUSION

The Court of Appeals decision should be affirmed. Division Three acted within its discretion in denying to hear the issue of LFOs for the first time on appeal.

Furthermore, the Court correctly ruled that the firearm was permissibly seized by the officers. In this case, the search was initiated because of the impoundment and was not performed to detect a crime, but rather to protect the police and public from potential danger. These are legitimate governmental interests that outweigh an individual's privacy interests. Furthermore, there has been no showing or argument that the

police acted in bad faith in this case or seized the gun for the sole purpose of a criminal investigation. In fact, officers left all the shell casings in the car and got a warrant that night. The only thing seized prior to the warrant's execution was the dangerous instrumentality, the firearm. The officers here were indisputably engaged in a community caretaking search of a lawfully seized automobile that was about to be towed.

Respectfully submitted this 4th day of November, 2015



TAMARA A. HANLON, WSBA # 28345
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Yakima County, Washington

DECLARATION OF SERVICE

I, Tamara A. Hanlon, state that on November 4, 2015, by agreement of the parties, I emailed a copy of "STATE'S ANSWER TO THE AMICUS CURIAE BRIEFS" to the following parties:

Ms. Susan Gasch at gaschlaw@msn.com

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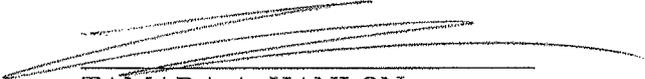
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I certify under penalty of perjury under the laws of the state of Washington that the foregoing is true and correct.

DATED this 4th day of November, 2015 at Yakima, Washington.



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Good morning,

Attached for filing is the State's Answer to Amicus Curiae Briefs in the case of State v. Chad Edward Duncan, No 90188-1

Sincerely,

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