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SUPREME COURT OF THE STATE OF WASHINGTON

BRYENT and PATRICIA FINCH,

Petitioners,

v.

THURSTON COUNTY SHERIFF'S OFFICE, et al.,

Respondents.

SUPPLEMENTAL BRIEF OF RESPONDENTS

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I. INTRODUCTION

Respondents Thurston County Sheriff's Office and Deputy Rod Ditrich (hereinafter "the County") submit this supplemental brief pursuant to RAP 13.7 (d). The Court of Appeals' unpublished opinion correctly affirmed the trial court's partial summary judgment in favor of the County on the claim asserted by Petitioners Bryant and Patricia Finch (hereinafter "Finch") for strict liability under RCW 16.08.040.

The trial court and Court of Appeals correctly held that the undisputed evidence established as a matter of law that Finch's injuries arose out of the "lawful application of a police dog" and dismissed Finch's strict liability claim based on RCW 16.08.040(2). Finch fails to show that the plain meaning interpretation of the statute that the lower courts relied upon was error, and he asks this Court to adopt a strained interpretation of the statute that is not supported by its language, the non-binding federal authorities he relies upon, or common sense.

II. SUPPLEMENTAL STATEMENT OF THE CASE

This case arises out of the accidental bite of Finch, a Tumwater police officer, by a Thurston County Sheriff's Office police dog, Rex. The bite occurred on November 14, 2010 during the course of a joint response by the Tumwater Police Department and the County to a

burglary in progress at the abandoned Olympia brewery. CP 118-19, 127. Both Finch and Deputy Rod Ditrich, Rex's handler, participated in the search. When Rex located the suspect inside the brewery, Deputy Ditrich recalled Rex. CP 122. In his deposition, Finch testified that, contrary to his training and standard protocol, he engaged the suspect prior to when Rex had returned to Deputy Ditrich because "I'm going home at night . . ." CP 125-26, 131. This movement by Finch confused Rex, who interpreted it as a threat to his handler, and Rex consequently bit Finch in the testicle. CP 285, 289.

In his Complaint, Finch asserted claims against the County for negligence, outrage, and strict liability under RCW 16.08.040. On cross motions for partial summary judgment, the trial court dismissed Finch's statutory strict liability claim. CP 10-11. In doing so, the court held that RCW 16.08.040(2), which provides that strict liability under the statute does not arise where an injury results from the "lawful application of a police dog," precluded the claim. RP 14-15. Finch then voluntarily dismissed his remaining claims for negligence and outrage in order to pursue this appeal. CP 4-5; Supp. CP 4-6. The Court of Appeals affirmed in an unpublished opinion.

III. SUPPLEMENTAL ARGUMENT

A. The County Has No Strict Liability, Because Finch's Injury Arose Out of the Lawful Application of a Police Dog

In 1941, the legislature enacted a law providing for strict liability to dog owners when their animals inflict bite injuries:

The owner of any dog which shall bite any person while such person is on a public place or lawfully in or on a private place including the property of the owner of such dog, shall be liable for such damages as may be suffered by the person bitten, regardless of the former viciousness of such dog or the owner's knowledge of such viciousness.

RCW 16.08.040(1). This law was in derogation of Washington common law, which previously had required a plaintiff show that the dog owner knew or should have known that the dog had dangerous propensities, before strict liability could arise. *Beeler v. Hickman*, 50 Wn. App. 746, 751, 750 P.2d 1282 (1988).¹ In 2012, the legislature enacted an amendment to the statute, which provides as follows:

This section does not apply to the lawful application of a police dog, as defined in RCW 4.24.410.

¹ The common law formulation of strict liability remains a viable cause of action in Washington, but it must be pleaded separately. *Sligar v. Odell*, 156 Wn. App. 720, 733, 233 P.3d 914 (2010)(refusing to consider common law strict liability on appeal where only statutory strict liability under RCW 16.08.040 had been pleaded and argued below). Just as in *Sligar*, in the case at bar Finch has only pleaded and argued statutory strict liability. Finch has never raised common law strict liability either in the trial court or on appeal.

RCW 16.08.040(2). The trial court correctly dismissed Finch's claim under RCW 16.08.040, because the undisputed evidence on summary judgment established that his injuries arose out of the lawful application of a police dog.

1. The Plain Language of RCW 16.08.040(2) Precludes Strict Liability in This Case Based on the Undisputed Facts

In order to determine whether RCW 16.08.040(2) applies in the case at bar, the court must undertake an analysis of the meaning of the phrase, "lawful application of a police dog." The primary objective of the court in interpreting a statute is to discern and carry out the Legislature's intent. *State v. Campbell & Gwinn, LLC*, 146 Wn.2d 1, 9, 43 P.3d 4 (2002). Because the surest indication of the legislature's intent is the language enacted by the legislature, when the meaning of a statute is plain on its face, the court will give effect to that plain meaning. *Id.*

"In the absence of a specific statutory definition, words in a statute are given their common law or ordinary meaning." *State v. Chester*, 133 Wn.2d 15, 22, 940 P.2d 1374 (1997). To determine the plain meaning of a term undefined by a statute, the court should first look to the dictionary definition. *State v. Kintz*, 169 Wn.2d 537, 547, 238 P.3d 470 (2010). In his petition for review, Finch notes that the word "application" is defined as "[t]he use or disposition made of a thing." Petition, p. 15 (quoting Black's

Law Dictionary 51 (5th ed. 1983)). Thus, “lawful application of a police dog” simply means a police dog that is used for lawful police purposes.

This is the plain meaning interpretation that the trial court employed:

With regard to the argument on the lawful application of a police dog, the Court does find that where a police dog is being used in a situation such as this where the police dog is being used to aid an officer in searching an area, that’s one thing, as opposed to having a police dog who normally goes home at night with their handler, getting out of the back yard and biting the neighbor. That in no way was the dog working at that point.

RP 14-15. In other words, so long as a police dog is being used for lawful police-related activities, the amendment applies to preclude a strict liability claim. Finch cites to no authority showing this plain meaning interpretation is erroneous.

The County established the following dispositive facts on summary judgment:

- Rex was a County police dog;
- The Tumwater Police Department and Finch requested Rex to assist them in locating a burglar at the Olympia brewery;
- The burglar was located by Rex;
- Rex was recalled to his handler;
- Finch engaged the suspect before Rex returned to his handler;
- Finch’s movement toward the suspect before Rex had returned to the handler was contrary to Finch’s training and police protocol; and
- Finch’s movement confused Rex, who interpreted it as a threat to his handler, resulting in the bite to Finch.

As the party opposing the County's summary judgment motion, Finch's burden was to raise a genuine issue of material fact by submitting admissible evidence disputing that Rex was lawfully used. CR 56 (c); *Meyer v. Univ. of Washington*, 105 Wn.2d 847, 852, 719 P.2d 98 (1986).² Finch failed to do so. Applying the plain meaning of the statute to the above undisputed facts, the trial court and the Court of Appeals properly found that summary judgment in favor of the County was required.

2. Neither the Language of RCW 16.08.040, Case Law, Nor Common Sense Supports Finch's Interpretation of the Statute

Finch asks this court to hold (1) that there is no "lawful application" of a police dog unless a police officer gives the dog a command to bite the plaintiff and (2) that strict liability should apply to all cases involving "innocent" plaintiffs who are mistakenly bitten by police dogs. Finch's arguments are based almost exclusively on federal case law. "[S]tate courts are the ultimate expositors of state law," and this court is

² The County does not agree with Finch's contention that RCW 16.08.040(2) is an affirmative defense for which it bears the burden of proof. Rather, RCW 16.08.040 (2) should be viewed as a curative amendment intended to clarify the scope of the original cause of action available in RCW 16.08.040(1). Ultimately, however, whether the County would bear the burden of proof at trial is irrelevant. The purpose of summary judgment is to avoid a useless trial when there is no genuine issue of material fact. *Olympic Fish Products v. Lloyd*, 93 Wn.2d 596, 602, 611 P.2d 737 (1980). Regardless of whether the defendant would ultimately bear the burden of proof at trial on an affirmative defense, summary judgment is appropriate if reasonable persons, from all of the evidence, could reach but one conclusion. See, e.g., *In re Estate of Hibbard*, 118 Wn.2d 737, 753, 826 P.2d 690 (1992) (summary judgment based on statute of limitations affirmative defense).

therefore not bound by the federal authorities Finch relies upon when interpreting RCW 16.08.040, a state statute. *Mullaney v. Wilbur*, 421 U.S. 684, 691, 95 S. Ct. 1881, 44 L.Ed.2d 508 (1975). This is particularly true here, given that the vast majority of authorities Finch cites are unpublished district court decisions.³ However, even considering those authorities, it is clear that summary judgment in favor of the County was appropriate. The court should reject Finch's interpretation of RCW 16.08.040, because it is contrary to the statute's plain meaning, would lead to absurd results, and is not supported by the little federal case law that has previously interpreted the statute.

Finch's proposed requirement that a command to bite must be given to a police dog before RCW 16.08.040(2) will apply is not supported by the statute's language. As noted above, the dictionary definition of "application" that Finch relies upon is "[t]he use or disposition made of a thing." Petition, p. 15 (quoting Black's Law Dictionary 51 (5th ed. 1983)). Other similar dictionary definitions for this

³ GR 14.1 allows a party to cite unpublished decisions issued by other jurisdictions if citation is permitted under the law of the jurisdiction of the issuing court. Although the Ninth Circuit rule allows citation to unpublished dispositions after January 1, 2007, it specifically provides that they "are not precedent, except when relevant to the doctrine of the law of the case or rules of claim preclusion or issue preclusion." FRAP 36-3(a) (emphasis added). In the trial court, in addition to the unpublished federal decisions he relies upon, Finch improperly cited an unpublished Superior Court order as authority. The trial court granted the County's motion to strike this citation. CP 14-15. Like the trial court, this court should disregard this improperly cited unpublished Superior Court order.

term include “an act of applying,” “an act of putting to use,” and “a use to which something is put.”⁴ Nothing about the plain meaning of the word “application” or the phrase “lawful application of a police dog” dictates that a dog’s handler must give a command for the dog to bite. Adding this unstated requirement “would result in a strained interpretation of the statute, and the court would then be engaging in legislation.” *Killian v. Atkinson*, 147 Wn.2d 16, 27, 50 P.3d 638 (2002).

As a practical matter, this interpretation of the statute would also lead to absurd results. *State v. J.P.*, 149 Wn.2d 444, 450, 69 P.3d 318 (2003) (holding that courts should avoid interpreting a statute in a manner that leads to absurd results). Police canines are trained to pursue and apprehend suspects who resist, threaten the canine, or threaten the canine’s handler. There is no legal requirement for a canine to bite only upon command by the handler. Such a requirement would render a canine largely useless when pursuing a fleeing suspect, because the canine ostensibly would be prohibited from biting the suspect until the canine’s handler caught up and gave a command to do so. If the handler did not catch up quickly enough, the suspect would be allowed to escape.

⁴ Merriam-Webster Online. Retrieved November 20, 2015, from <http://www.merriam-webster.com/dictionary/application>.

Moreover, when a canine handler is assaulted, police dogs are trained to protect the handler by attacking and biting the assailant.⁵ In this scenario, an officer might be unconscious and unable to command the dog to bite. Yet, under Finch's interpretation of the statute, the assailant would have a strict liability claim against the police because the assaulted officer never gave a "bite" command. Reading the statute to impose this requirement would thus effectively deprive police of the ability to use canines for protection. This was not the legislature's intent.

In support of his claim that a bite command is required before RCW 16.08.040(2) can apply, Finch relies extensively on a case from the Ninth Circuit Court of Appeals in which an arrestee asserted claims for excessive force under 42 U.S.C. § 1983 and strict liability. *Miller v. Clark County*, 340 F.3d 959 (9th Cir. 2003). The court indicated in a footnote that no strict liability arises where a police dog is used in a manner that is lawful under the Fourth Amendment:

We also affirm the district court's judgment for the defendants on Miller's state-law strict liability claim under Rev. Code Wash. § 16.08.040, which makes a dog owner strictly liable for damages caused by a dog bite, because we conclude that the

⁵ The Washington State Police Canine Association accreditation manual's performance standards outline exercises related to this type of training under the heading "MASTER PROTECTION." CP 148.

Washington Supreme Court would hold that a police officer is not liable under Rev. Code Wash. § 16.08.040 for a police dog's bite if the officer's ordering the dog to bite was reasonable under the United States Constitution's Fourth Amendment. Here, Deputy Bylsma's ordering the police dog to bite and hold Miller did not constitute unreasonable force under the Fourth Amendment, so it also is not actionable under Rev. Code Wash. § 16.08.040.

Miller, 340 F.3d at 968, fn. 14 (emphasis added). Because the Ninth Circuit affirmed the trial court's finding that use of the dog was reasonable under the Fourth Amendment and not excessive force, it held that the plaintiff likewise could not prevail on his strict liability claim. *Id.*

Finch's claim that *Miller* stands for the proposition that without a dog bite command, there is no "application" of a police dog for purposes of RCW 16.08.040(2) is without merit. Petition for Review, p. 15. *Miller* was decided in 2003, nine years before subsection (2) of RCW 16.08.040 was enacted in 2012. Obviously, the *Miller* court could not have been considering the meaning of the word "application," as Finch argues it was, because that word did not yet appear in the statute. Instead, the *Miller* court was determining the scope of the original cause of action under subsection (1). In *Miller*, the Ninth Circuit held that even before subsection (2) was enacted, no strict liability would arise in situations where use of a police dog was lawful under the Fourth Amendment.

In *Miller*, the police dog had been given a command to search for the suspect and hold him by biting his arm or leg. *Miller*, 340 F.3d at 961. The *Miller* court's reference to an "officer's ordering the dog to bite" is thus simply a statement of its holding within the context of the facts of the case before it. *Id.* at 968, fn. 14. The focus of the *Miller* court's strict liability holding was the officer's compliance with the Fourth Amendment, not the fact that the officer gave the dog a command to bite. Compliance with the Fourth Amendment has also been the focus of the vast majority of federal district court cases interpreting RCW 16.08.040, both before and after the amendment was enacted in 2012. *See, e.g., Saldana v. City of Lakewood*, No. 11-CV-06066 RBL, 2012 WL 2568182 (W.D. Wash. July 2, 2012) (noting that plaintiff's strict liability claim "rises and falls" with other claims); *Rogers v. City of Kennewick*, 304 Fed. Appx. 599, 601 (9th Cir. 2008) (noting that the plaintiff had been subjected to Fourth Amendment seizure, even though not intended target of police dog); *Terrian v. Pierce County*, No. C08-5123BHS, 2008 SL 2019815, *1 (W.D. Wash. May 9, 2008) ("[B]ecause Plaintiff has conceded that he cannot support a claim for a violation of the Fourth Amendment or for negligence, his claim also fails to state an actionable claim under RCW § 16.08.040."); *Beecher v. City of Tacoma*, No. C10-5776 BHS, 2012 WL 1884672, *11 (W.D. Wash. May 23, 2012) ("With regard to Beecher's claim under RCW

16.08.040, the court dismisses this claim because the court concludes that the use of force was reasonable.”).

Here, Finch’s strict liability claim fails, because he was never seized within the meaning of the Fourth Amendment. A plaintiff must show that a search or seizure occurred and that the search or seizure was unreasonable in order to show that the Fourth Amendment was violated. *See Brower v. County of Inyo*, 489 U.S. 593, 599, 109 S. Ct. 1378, 103 L.Ed. 628 (1989); *see also Carlson v. Bukovic*, 621 F.3d 610, 618 (7th Cir. 2010) (“Any Fourth Amendment inquiry necessarily begins with a determination of whether a search or seizure actually occurred.”). To show that he was seized, Finch would be required to show that Deputy Ditrich’s intent was for Rex to bite:

It is clear ... that a Fourth Amendment seizure does not occur whenever there is a governmentally caused termination of an individual’s freedom of movement (the innocent passerby), nor even whenever there is a governmentally caused and governmentally *desired* termination of an individual’s freedom of movement (the fleeing felon), but only when there is a governmental termination of freedom of movement *through means intentionally applied*.

Id. at 596-97 (emphasis in original). There is no dispute that Deputy Ditrich, having recalled Rex, did not intend for Rex to seize or bite anyone at the time of Finch’s injury. Moreover, in Finch’s summary judgment briefing, he conceded that there was no Fourth Amendment seizure at

issue in the case at bar: “It is obvious that Officer Finch was not seized, but rather, was an innocent person who was mistakenly bitten.” CP 96 (emphasis added). Given this concession and the undisputed evidence, there is no basis for claiming that the use of Rex was in any way unlawful.

Finch also asks this court to hold that whenever an “innocent victim” is mistakenly bitten by a police dog, a municipality should be strictly liable. Petition for Review, pp. 11-13. Again, this argument is not supported by the language of RCW 16.08.040(2). The statute’s language makes no distinction based on “innocent” or “mistakenly bitten” plaintiffs whatsoever. As a practical matter, police officers do not determine the “guilt” or “innocence” of suspects during a search, but only whether probable cause exists to use a police dog to effectuate a search or seizure. *See, e.g., State v. Young*, 123 Wn.2d 173, 187, 867 P.2d 593 (1994). Where probable cause for a search or seizure exists, the fact that the person who is searched or seized turns out to be “innocent” of any crime does not render the search or seizure unlawful. *Bender v. City of Seattle*, 99 Wn.2d 582, 591-92, 664 P.2d 492(1983) (holding that probable cause is a complete defense to actions for false arrest and false imprisonment). The court should consequently reject this proposed interpretation of the statute, as well.

3. Finch Had Other Tort Remedies that He Abandoned, and RCW 16.08.040(1) must be Strictly Construed as a Statute in Derogation of the Common Law

Finch argues that unless strict liability under RCW 16.08.040 is recognized here, victims of police dog bites will have no remedy. Petition for Review, p. 13. He further claims that RCW 16.08.040(1) should be interpreted broadly to impose strict liability and that RCW 16.08.040(2), as an exception, should be narrowly construed. Petition for Review, pp. 13-14. The truth, however, is precisely the opposite.

Finch chose to abandon other tort remedies available to him, specifically his claims for negligence and outrage, by voluntarily dismissing them in favor of pursuing an early appeal of the trial court's dismissal of his strict liability claim. Supp CP 4-6. Moreover, as discussed above, common law strict liability remains an actionable legal theory, but it requires proof of an additional element. *Sligar*, 156 Wn. App. at 733. Thus, other adequate tort remedies were available to Finch, like all individuals who are bitten by police dogs as a result of negligence or other tortious conduct. Contrary to Finch's assertions RCW 16.08.040(1) must be strictly construed, because it in derogation of the common law. *Beeler*, 50 Wn. App. at 751; *McDonald v. Whatcom County Dist. Court*, 92 Wn.2d 35, 37, 493 P.2d 546 (1979). "Strict construction requires that, 'given a choice between a narrow, restrictive construction and

a broad, more liberal interpretation, [the court] must choose the first option.” *In re Det. of Hawkins*, 169 Wn.2d 796, 801, 238 P.3d 1175 (2010)(quoting *Pac. Annual Conference of United Methodist Church v. Walla Walla County*, 82 Wn.2d 138, 141, 508 P.2d 1361 (1973)). Finch’s claim that the statute must be given a broad and expansive construction in order to afford him another remedy is therefore incorrect. The statute should be strictly construed and the amendment should be interpreted as a curative measure that clarifies that the legislature never intended the statute to extend strict liability to lawfully used police dogs.

B. This Court Should Not Review the Court of Appeals’ Unchallenged Holding that RCW 16.08.040(2) Applies Retroactively

Finch’s petition for review did not challenge the Court of Appeals’ determination that RCW 16.08.040(2) applied retroactively. Rather, the sole issue Finch identified for this court’s review is whether the trial court erred in its summary judgment decision, “because the dog bite injury to Officer Finch did not result from the lawful application of a police dog.” Petition for Review, p. 1.

“If the Supreme Court accepts review of a Court of Appeals decision, the Supreme Court will review only the questions raised in the motion for discretionary review . . . or the petition for review and the answer, unless the Supreme Court orders otherwise upon the granting of

the motion or petition.” RAP 13.7 (b); *see also Estate of Jordan v. Hartford Accident & Indem. Co.*, 120 Wn.2d 490, 844 P.2d 403 (1993) (“The court will normally not review any issues not presented in the petition for review or the answer.”); *Honcoop v. State*, 111 Wn.2d 182, 193, 759 P.2d 1188 (1988)(holding that where appellant did not assign error to a holding of the Court of Appeals, it was not properly before the Supreme Court). Here, because Finch did not raise the Court of Appeals’ retroactive application of the statute in his petition for review and the court’s order accepting review did not expand review to this issue, it should not be reviewed on appeal. However, as explained below, even if the court revisits this unchallenged issue, the lower courts correctly decided it and they should be affirmed.

C. Because RCW 16.08.040(2) Is Remedial and Curative, the Lower Courts Were Correct to Apply it Retroactively

Should this court choose to revisit the unchallenged holding that RCW 16.08.040(2) applied retroactively to this case, that holding should be affirmed. The Court of Appeals correctly applied RCW 16.08.040(2) retroactively, because Finch had no vested right in a statutory cause of action that the legislature abolished. A statute or an amendment to a statute may be retroactively applied (1) if the legislature intended retroactive application, (2) if the statute is clearly curative, or (3) if the

statute is remedial. *1000 Virginia Ltd. P'ship. v. Vertecs*, 158 Wn.2d 566, 584, 146 P.3d 423 (2006). Here, all three potential grounds for giving the amendment retroactive application are satisfied.

“A statute is remedial when it relates to practice, procedure, or remedies and does not affect a substantive or vested right.” *Miebach v. Colasurdo*, 102 Wn.2d 170, 181, 685 P.2d 1074 (1984). RCW 16.08.040(2), which restricts the strict liability remedy available under the statute, is clearly remedial. “An accrued cause of action is a vested right when it ‘springs from contract or from the principles of the common law.’” *1000 Virginia Ltd. P'ship*, 158 Wn.2d at 587 (quoting *Robinson v. McHugh*, 158 Wash. 157, 163, 291 P. 330 (1930)). However, where a cause of action exists solely “by virtue of a statute” it is not a vested right. *Ballard Square Condo. Owners Ass'n v. Dynasty Constr. Co.*, 158 Wn.2d 603, 617, 146 P.3d 914 (2006). Here, Finch’s strict liability claim under RCW 16.08.040 was statutory, and his right was consequently not vested.

Additionally, a proper analysis of RCW 16.08.040(2) in its historical context makes clear that it was an amendment that was intended to be curative. Both the historical context of the statute and comments during the legislative process indicate that the intent of the amendment was to clarify that the statute as originally enacted was never for it to apply to lawfully used police dogs. As previously explained, prior to the

enactment of RCW 16.08.040(1) in 1941, Washington common law provided for strict liability for injuries caused by domestic animals, but it required a showing of *scienter*, meaning that the owner knew or should have known that the dog was dangerous. *Lynch v. Kineth*, 36 Wash. 368, 370-71, 78 P. 923 (1904); *Beeler*, 50 Wn. App. at 751. Because RCW 16.08.040 (1) eliminates this element, the statute is in derogation of the common law and must be strictly construed. *Sligar*, 156 Wn. App. at 727 (quoting *Beeler*, 50 Wn. App. at 751).

In 1941, the legislature had not yet waived the government's sovereign immunity.⁶ Consequently, it is unreasonable to conclude that the legislature intended for the statute to extend strict liability to governmentally owned and controlled police dogs. The legislature did not even recognize "police dogs," as defined in RCW 4.24.410(1)(a), until 1982. A proper strict construction of RCW 16.08.040(1) in historical context, then, would hold that the statute did not extend strict liability to lawfully used police dogs.

During the House and Senate committee hearings relating to the 2012 bill that contained the amendment that was eventually codified as RCW 16.08.040 (2), almost all testimony and discussion pertained to an

⁶ Washington's statutory waivers of sovereign immunity for State and local governments were not enacted until 1961 and 1967 respectively. RCW 4.92.090; RCW 4.96.010.

unrelated criminal penalty provision of the bill. However, the Chair of the House Committee on Public Safety and Emergency Preparedness, Christopher Hurst, made the following statement with respect to the amendment excepting police dogs from strict liability:

CHAIRMAN HURST: I don't have a lot of problem with addressing that issue because I think that's simply something that's common sense and we don't want to spend a lot of local government's money of litigating something that probably was an oversight as -- as that had -- as that had occurred.

CP 181. As recognized by the Chairman, common sense would dictate that police dogs -- which unlike dogs owned by private citizens are, at times, supposed to bite and attack -- should not subject municipalities to strict liability. RCW 16.08.040(2) is simply a legislative clarification that the law should continue to be given this common sense meaning. As such, the lower courts were correct to apply it retroactively in this case.

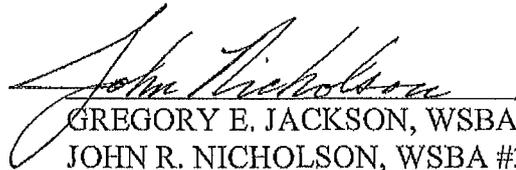
IV. CONCLUSION

Finch's strict liability claim was precluded by RCW 16.08.040(2), because the undisputed facts on summary judgment established that his injury arose out of the lawful application of a police dog. For all the reasons above, this Court should affirm the Court of Appeals' plain

meaning interpretation of the statute and its unchallenged holding that it retroactively applied to the case at bar.

RESPECTFULLY SUBMITTED this 20th day of November, 2015.

FREIMUND JACKSON & TARDIF, PLLC

A handwritten signature in cursive script, appearing to read "John Nicholson", written over a horizontal line.

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CERTIFICATE OF SERVICE

I certify that the foregoing was served by the method indicated below to the following this 20th day of November, 2015.

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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 20th day of November, 2015 in Seattle, Washington.


KATHIE FUDGE

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Attached please find the Supplemental Brief of Respondents in the case listed below. Thank you.

Bryent Finch, et al. v. Thurston County Sheriff's Office, et al.
WA State Supreme Court Cause No. 91761-2

Filed by:
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Sincerely,

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