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No. 93098-8

RECEIVED ELECTRONICALLY

IN THE SUPREME COURT
FOR THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Petitioner,

v.

CHELAN COUNTY DISTRICT
COURT, HON. ROY S. FORE, and

ROBERT JAMES BOWIE
(real party in interest),

Respondents.

RESPONDENT BOWIE'S ANSWER IN OPPOSITION TO PETITIONER'S
MOTION FOR DISCRETIONARY REVIEW AND DIRECT REVIEW

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I. IDENTITY OF RESPONDENT/RELIEF REQUESTED

Robert Bowie, Respondent, presents the following answer to both the State's request for discretionary review and direct review. Mr. Bowie asks this Court to deny both requests for review.

II. LOWER COURT PROCEEDINGS

The trial court suppressed Mr. Bowie's refusal to submit to a breath test. The State sought a Writ of Review in the superior court, which was denied. The State filed for discretionary review and direct review with this Court. The court commissioner granted a temporary stay of proceedings, and this matter is scheduled for review on June 28, 2016.¹

III. COUNTER-STATEMENT OF ISSUES FOR REVIEW

1. Should review be denied because the superior court correctly denied the State's request for a Writ of Review? Does this Court's decision in *Holifield* compel this Court to deny the State's request for review?
2. Should review be denied because the State has failed to establish any conflict within appellate decisions addressing suppression of evidence due to misleading implied consent warnings? Do appellate decisions consistently hold that warnings which imply or convey a meaning different than intended under statute are prejudicial and require suppression?

¹ Ruling Referring Motion Pursuant to RAP 17.2(b) and Granting Temporary Stay; May 31, 2016.

3. Should review be denied because the State has failed to raise any issue of public interest or any fundamental and urgent issue of broad public import? Is this case substantially different from other DUI cases where direct review has been granted in that here the issue is particular to the unique facts of the case and the State has failed to establish any other cases may be impacted by a decision in this case?

IV. STATEMENT OF THE CASE

For the sake of brevity, Respondent incorporates herein the factual statement contained in the commissioner's ruling granting temporary stay.²

V. ARGUMENT WHY REVIEW SHOULD BE DENIED

The State seeks discretionary review on three grounds: (1) The superior court decision conflicts with appellate decisions; RAP 2.3(d)(1); (2) This case raises issues of public interest; RAP 2.3(d)(3); and (3) The superior court departed from the accepted and usual course of judicial proceedings; RAP 2.3(d)(4).

The State seeks direct review on two grounds: (1) There is a conflict amongst appellate decisions; RAP 4.2(a)(3); and (2) This case raises a fundamental and urgent issue of broad public import; RAP 4.2(a)(4).

Respondent contends that review is not warranted for any of the reasons asserted by the State.

² Id.

1. The State has failed to establish the superior court erred in denying the request for Writ of Review. This Court must uphold its decision in *Seattle v. Holifield* and deny review where the State has failed to establish both probable error and that the ruling substantially alters the status quo or substantially limits its freedom to act.

The State is seeking discretionary review under RAP 2.3(d).³

Application of this rule appears questionable. This rule applies to appellate review of superior court cases reviewing decisions from the courts of limited jurisdiction (i.e. RALJ appeals). However, no RALJ appeal has been filed in this case, and Mr. Bowie has yet to stand trial.

Instead, the State has sought a Writ of Review under RCW 7.16.040; which is an original action filed in the superior court. A Writ of Review is an extraordinary remedy and should be granted “sparingly.”⁴ In pertinent part, a writ shall be granted, “when an inferior tribunal ... [has acted] illegally, and there is no appeal, nor in the judgment of the court, any plain, speedy and adequate remedy at law.”⁵

Accordingly, this Court in *Seattle v. Holifield*⁶ held that the proper standard for review of a denial of a Writ of Review is the standard for

³ Motion for Discretionary Review, pg. 4.

⁴ *Holifield*, at 246. This Court considered it to be its “overarching dogma” that writs are rare and should be infrequently granted. At 246.

⁵ RCW 7.16.040 [Emphasis added].

⁶ 170 Wn.2d 230, 240 P.3d 1162 (2010).

interlocutory review under RAP 2.3(b). This rule addresses review of interlocutory decisions of the superior court. This Court stated,

“We hold that, for purposes of RCW 7.16.040, an inferior tribunal, board or officer, exercising judicial functions, acts illegally when that tribunal, board, or officer (1) has committed an obvious error that would render further proceedings useless; (2) has committed probable error and the decision substantially alters the status quo or substantially limits the freedom of a party to act; or (3) has so far departed from the accepted and usual course of judicial proceedings as to call for the exercise of revisory jurisdiction by an appellate court.”⁷

In adopting this rule, this Court cited approvingly to a law review article written by former Supreme Court Commissioner Geoffrey Crooks.⁸ The standards under RAP 2.3(b) are “specific and stringent” and “simple and straightforward.”⁹

The consideration of granting the State’s request for review must be determined by applying *Holifield*. The opportunity for review under RAP 2.3(b) must not be so broad as to encompass what the State believes to be “mere errors of law.”¹⁰ That is to say, it is not enough to contend that

⁷ *Holifield*, at 244-245.

⁸ *Holifield*, at 245; Geoffrey Crooks, *Discretionary Review of Trial Court Decisions Under the Washington Rules of Appellate Procedure*, 61 Wash. L.Rev. 1541, 1545 (1986).

⁹ *Id.*

¹⁰ *Holifield*, at 245.

a trial judge simply erred in how it ruled on a particular issue.¹¹ In fact, this Court stated in *Holifield* that even if the trial court had erred in its ruling there would have been no basis to grant a writ under RAP 2.3(b).¹²

Holifield is also relevant here because it involves the suppression of a breath test in a DUI trial. Suppression was predicated on the court's interpretation of a court rule impliedly permitting the suppression of evidence as a remedy for governmental misconduct related to the toxicology lab overseeing breath testing.¹³ While this Court ultimately held the trial court ruling was correct, it observed that even if the court had erred, it would have been a "mere error of law;" and writ process was not an appropriate means of seeking review of the issue.¹⁴

In the present case, the State has sought a writ to challenge what it believes to be a "mere legal error;" the suppression of a breath test refusal. The State believes there is conflicting case law on the standards to be used to suppress refusal evidence.¹⁵ This case is therefore indistinguishable

¹¹ In this regard, *Holifield* overturned Division One's ruling in *Seattle v. Keene*, 108 Wn. App. 630, 639-640, 31 P.3d 1234 (2001), which held that the purpose of a Writ of Review was to review legal error.

¹² *Holifield*, at 246.

¹³ *Holifield*, at 234.

¹⁴ *Holifield*, at 246.

¹⁵ Mot. for Discretionary Review, pg. 4; Statement of Grounds for Direct Review, pg. 4.

from *Holifield*. Simple disagreement with the judge's ruling is not a basis to obtain a writ. This does not address the standards under RAP 2.3(b).

The State's arguments, when considered under RAP 2.3(b), fail. The State makes no claim that the superior court denial of the writ was "obvious error" rendering "further proceedings useless." RAP 2.3(b)(1).

The State appears to make the argument for review under RAP 2.3(b)(2) under its argument seeking review under RAP 2.3(d) and RAP 4.2(a).¹⁶ While the argument is not expressly stated, the State is suggesting that the superior court committed "probable error" due to its perceived conflict in case law. However, the superior court judge's ruling states that the State failed to prove "probable" error, and at best proved only "possible" error.¹⁷ The State never addresses this difference, and utterly fails to address how the suppression ruling "substantially alters the status quo or substantially limits the freedom of a party to act." RAP 2.3(b)(2).

Finally, the State presents argument for review under RAP 2.3(b)(3) under its argument seeking review under RAP 2.3(d)(4).¹⁸ Both rules require argument that the superior court "has so far departed from the accepted and usual course of judicial proceedings, or so far sanctioned

¹⁶ Mot. for Discretionary Review, pg. 4; Statement of Grounds for Direct Review, pg. 4.

¹⁷ Motion for Discretionary Review; Appendix H.

¹⁸ Motion for Discretionary Review, pg. 6.

such a departure by [the court of limited jurisdiction or an inferior court or administrative agency], as to call for review by the appellate court.”¹⁹ The State claims the superior court did this when it failed to review the trial court’s ruling de novo.²⁰

Considering this Courts acceptance of Mr. Crooks’ law review article in *Holifield*, it would be appropriate to review how Mr. Crooks’ interprets the criteria for review under RAP 2.3(b) applicable here.

In conjunction with proving “probable” error the State must also prove the trial judge's ruling "substantially alters the status quo or substantially limits the freedom of a party to act."²¹ While not addressed before this Court,²² the State claimed before the superior court that the status quo may be altered because without a writ it would be forced to proceed to trial and lose the opportunity to challenge the court's ruling.²³ However, this isn't what is meant by a substantially altered status quo.

¹⁹ RAP 2.3(b)(3); RAP 2.3(d)(4).

²⁰ Motion for Discretionary Review, pg. 7.

²¹ *Holifield*, at 244-245.

²² Motion for Discretionary Review; Statement of Grounds for Direct Review.

²³ State's Motion for Discretionary Review, Appendix G; Sect. D.3.

In *State v. Howland*,²⁴ Division One looked to Mr. Crooks' law review article to define what is meant under RAP 2.3(b)(2). Crooks wrote that RAP 2.3(b)(2) was primarily drafted in order to apply to "injunctions, attachments, receivers, and arbitration, which have formerly been appealable as a matter of right."²⁵ A trial court order such as, "[O]rder[s] denying a motion to dismiss, excluding a crucial piece of evidence or granting a partial motion for summary judgment, is generally insufficient to satisfy the effect prong."²⁶

According to Crooks, to satisfy the desire to limit review under the rule, review should only be accepted when a trial court order, like an injunction, has an immediate effect "outside the courtroom."²⁷ Crooks offered examples such as when an order compels a party to remove a structure or restrains a party from disposing of property; such orders have an effect beyond the immediate litigation.²⁸

"But where a trial court's action merely alters the status of the litigation itself or limits the freedom of a party to act in the conduct of the lawsuit, even if the trial court's action is probably erroneous, it is not sufficient to invoke

²⁴ 180 Wn. App. 196, 321 P.3d 303 (2014). Citing Geoffrey Crooks, *Discretionary Review of Trial Court Decisions under the Washington Rules of Appellate Procedure*, 61 Wash. L. Rev. 1541 (1986).

²⁵ *Howland*, at 206.

²⁶ *Howland*, at 206.

²⁷ *Howland*, at 206.

²⁸ *Howland*, at 207.

review under RAP 2.3(b)(2). Errors such as these are properly reviewed, if necessary, at the conclusion of the case where they may be considered in the context of the entire hearing or trial.²⁹

The State makes no claim that the trial court ruling affects it in any capacity outside the courtroom. The effects are all within the litigation. Considering the trial judge's observation that the State still retains "sufficient admissible evidence" to prosecute Mr. Bowie, any claim the status quo has been substantially altered is specious and unfounded.³⁰

Finally, with regards to RAP 2.3(b)(3), Crooks notes that review is typically restrained to issues of jurisdiction.³¹ As an example, Crooks cited to *Wahler v. Dept of Social & Health Services*.³² There, review was granted to review a court decision granting a remedy on an issue never raised before the administrative agency. There is no such error here.

The State's argument for review is completely at odds with *Holifield*. The State chastises the superior court because, while the court may have ruled in the State's favor if the suppression ruling were originally before it, the court refused to grant the writ precisely because

²⁹ *Howland*, at 207. Note: The State can challenge legal errors under RALJ 2.2(c).

³⁰ Motion for Discretionary Review; Appendix B.

³¹ Geoffrey Crooks, *Discretionary Review of Trial Court Decisions under the Washington Rules of Appellate Procedure*, 61 Wash. L. Rev. 1541, 1548 (1986).

³² 20 Wn. App. 571, 582 P.2d 534 (1978).

the State failed to satisfy the “probable” error requirement.³³ In essence, the State’s argument is that the superior court departed from the accepted and usual court of judicial proceedings because it followed the *Holifield* decision. This argument must fail.

The *Holifield* decision was meant to create a clear rule for evaluating review of a request for a Writ of Review. This Court emphatically rejected the notion that the writ may be used to review “mere legal errors.” Granting review here seriously undercuts the validity of *Holifield*, and sends a clear message to prosecutors that the restraints in *Holifield* do not apply to them. The State has provided no rationale for abandoning *Holifield*, and review in this case should be denied.

2. Appellate cases consistently hold that a warning is misleading and requires suppression where it implies or conveys a meaning different than found in the statute. The State fails to establish any conflict within appellate decisions that might challenge the superior court’s ruling there is no probable error.

Citing only a handful of cases, the State claims that appellate cases conflict regarding who has the burden to prove an erroneous implied consent warning prejudiced a defendant.³⁴ The State argues this justifies

³³ Motion for Discretionary Review, pg. 7.

³⁴ Mot. For Discretionary Review, pg. 4; Statement of Grounds for Direct Review, pg. 4.

discretionary review under RAP 2.3(d)(1) and direct review under RAP 4.2(a)(3). There is no conflict, and review should be denied.

The specific issue in the present case relates to whether the officer's request for Mr. Bowie to submit to a "voluntary" test altered the impact of the implied consent warning previously given and requires suppression of his refusal. The trial court ruled that it did; that the term "voluntary" was not synonymous with the right to "refuse" as described in the warning, and altered its meaning.³⁵ The trial court ruled that the State had the burden to prove the warning did not cause prejudice; and held that the State failed to prove the lack of prejudice under either a "beyond reasonable doubt" or "preponderance" standard.³⁶

The superior court denied the State's request for a Writ of Review. The court applied the correct standard from *Holifield*; ruling that the State could not establish "probable error" in the trial court's suppression ruling.³⁷ As will be established below, the superior court and trial court's decision was consistent with Supreme Court and Court of Appeals decisions addressing misleading implied consent warnings.

³⁵ Motion for Discretionary Review; Appendix B.

³⁶ *Id.*

³⁷ Motion for Discretionary Review; Appendix A.

This Court, in *State v. Whitman Cty District Court*,³⁸ articulated a standard for evaluating implied consent warning issues in criminal cases that is practical, based on common sense, has been relied upon in subsequent cases for thirty years, and importantly, was applied in this case. According to *Whitman Cty*, a warning is misleading when it conveys a meaning different than that specified by the implied consent statute.³⁹ In *Whitman Cty* the warning over-stated the consequences of refusing the test, which led the Court to conclude that the warning placed undue pressure on the defendant to avoid these consequences by submitting to the test.⁴⁰ Such a misleading warning required suppression because it denied the defendant the opportunity to exercise an intelligent judgment whether to exercise the statutory right of refusal.⁴¹

This standard from *Whitman Cty* has been consistently applied in criminal cases ever since. In *State v. Bartels*,⁴² the state altered the statutory warning given drivers, but unlike *Whitman Cty*, the alteration

³⁸ 105 Wn.2d 278, 714 P.2d 1183 (1986). (Defendants were told their refusal to submit to a breath test “shall” be used at trial; deviating from the statutory language a refusal “may” be used at trial. The Court suppressed test results.)

³⁹ *Whitman Cty*, at 285-286.

⁴⁰ *Id.*

⁴¹ *Whitman Cty*, 286-287.

⁴² 112 Wn.2d 882, 774 P.2d 1183 (1989). (The altered warning added language that stated that if a driver sought an independent test it would be “at your own expense.”)

was only misleading to certain defendants; those who were indigent.⁴³ To these drivers, the warning altered the meaning of the statutory warning and prevented them from making a properly informed decision.⁴⁴ Because only indigent drivers were impacted by the alteration, this Court required the State to prove that a defendant was not indigent; otherwise the misleading warning required suppression.⁴⁵

Whitman Cty was addressed again in *State v. Storhoff*.⁴⁶ While not involving an implied consent issue, this Court relied on *Whitman Cty* to resolve the case. Drivers were given an incorrect deadline to contest a finding they were habitual traffic offenders (HTO).⁴⁷ Noting the similarity with inaccurate implied consent warnings, the Court held that in order to invalidate the HTO notice actual prejudice to the driver must be established.⁴⁸ But in a footnote, the Court reiterated that the misleading warning in *Whitman Cty* caused actual prejudice.⁴⁹

Court of Appeals' decisions have likewise applied the *Whitman Cty* standard to determine whether to suppress test results. See *Clyde Hill*

⁴³ *Bartels*, at 887.

⁴⁴ *Bartels*, at 889.

⁴⁵ *Bartels*, at 890.

⁴⁶ 133 Wn.2d 523, 946 P.2d 783 (1997).

⁴⁷ *Storhoff*, at 527.

⁴⁸ *Storhoff*, at 531-532.

⁴⁹ *Storhoff*, at 530, fn. 6. Court recognized that the warning in *Whitman Cty* "actually prejudiced the defendants."

v. Rodriguez,⁵⁰ and *Moffitt v. Bellevue*.⁵¹ These courts declined to suppress test results where, despite an altered warning, no different meaning was implied or conveyed compared to the statutory warning.⁵²

These cases clearly articulate a standard for criminal cases. A warning is misleading where it implies or conveys a meaning different from the statutory language. Prejudice is implicit within the misleading nature of the warning where it has an identifiable impact on the defendant's decision to take the test or refuse.

The State suggests there is a conflict between these cases and the Court of Appeals' decisions in *Lynch*⁵³ and *Grewal*^{54, 55}. There isn't. These cases are not criminal cases; they involve civil license suspensions. Nonetheless, the critical difference is that in both *Lynch* and *Grewal* the courts found that the warnings were not misleading.⁵⁶ *Lynch* states;

“[A] showing of actual prejudice to the driver is appropriate in a *civil* action where the arresting officer has

⁵⁰ 65 Wn. App. 778, 831 P.2d 149 (1992). (The warning was modified as related to how a defendant may obtain an independent test; but the court concluded the alteration meant virtually the same thing as the statutory language.)

⁵¹ 87 Wn. App. 144, 940 P.2d 695 (1997). (The warning stated the defendant could obtain an independent test pursuant to RCW 46.61.506. The officer provided defendant with a copy of the statute.)

⁵² See *Rodriguez*, at 785; and *Moffitt*, at 148.

⁵³ *Lynch v. Dept of Licensing*, 163 Wn. App. 697, 262 P.3d 65 (2011).

⁵⁴ *Grewal v. Dept of Licensing*, 108 Wn. App. 815, 33 P.3d 94 (2001).

⁵⁵ Mot. For Discretionary Review, pg. 5; Statement of Grounds for Direct Review, pg. 5.

⁵⁶ *Lynch*, at 708-709; *Grewal*, at 822.

given all of the warnings, but merely failed to do so in a 100 percent accurate manner.”⁵⁷

The court in *Lynch* distinguished the case from other cases, such as *Whitman Cty*, noting that in those cases courts first found the warning misleading before addressing whether the warning was prejudicial.⁵⁸ *Lynch* ultimately re-affirmed the standard in *Whitman Cty*; stating “that [warnings] that are neither inaccurate not misleading do not result in prejudice to the driver in civil proceedings.”⁵⁹

In civil license suspensions, courts still determine prejudice resulting from a misleading warning based on the impact the warning has on the driver’s ability to make a knowing choice. In *Welch v. Dept of Licensing*,⁶⁰ a warning was misleading because it told drivers they “could” face a license revocation for refusing a test; rather than using the mandatory term “shall.”⁶¹ This warning could prejudice a driver into refusing believing a revocation was not mandatory; thus affecting the opportunity to make an intelligent decision.⁶² In *Cooper v. Dept of*

⁵⁷ *Lynch*, at 710; citing *Thompson v. Dept of Licensing*, 138 Wn.2d 783, 797, fn. 8, 982 P.2d 601 (1999). [Emphasis in original]

⁵⁸ *Id.*

⁵⁹ *Id.*

⁶⁰ 13 Wn. App. 591, 536 P.2d 172(1975).

⁶¹ *Welch*, at 592.

⁶² *Id.*

Licensing,⁶³ a warning was misleading where it conveyed the possibility the revocation period for a refusal could be less than one year.⁶⁴ “Prejudice is determined by considering whether the inaccurate information may have encouraged Mr. Cooper not to take the [test.]”⁶⁵ Contrary to the State’s assertion, these cases do not compel “automatic” reversal;⁶⁶ the courts simply recognized the impact the misleading warning had on the driver’s decision-making process.⁶⁷

This Court, however, is not being asked to address the appropriate standard for civil license suspension cases. The existence of any distinction between criminal and civil cases is not grounds for granting review in the present case. Here, the trial court found that the officer gave misleading information to Mr. Bowie when he asked him to submit to a voluntary test.⁶⁸ The court’s findings state that the term “voluntary” is not synonymous with the statutory right of refusal, in that the latter carries with it immediate consequences, whereas the term “voluntary” does not.⁶⁹ The officer’s statement implied and conveyed a meaning different than the

⁶³ 61 Wn. App. 525, 810 P.2d 1385 (1991).

⁶⁴ *Cooper*, at 528.

⁶⁵ *Id.*

⁶⁶ Motion for Discretionary Review, pg. 5.

⁶⁷ *Cooper*, at 528.

⁶⁸ Motion for Discretionary Review; Appendix B.

⁶⁹ *Id.*

statutory language. Prejudice is implicit because the term “voluntary” has an identifiable impact on the decision to refuse.

The State makes a claim that a conflict exists in case law applying what it labels the application of a “constitutional harmless error standard” on its burden to disprove prejudice.⁷⁰ However, the purported conflict is not a basis for review in this case. Regardless whether a constitutional or non-constitutional standard applies, case law still links suppression to the prejudice engendered by a misleading warning. Prejudice isn’t separate from the misleading warning; it must derive from it.⁷¹ This was the case here. But more pertinent to the present case, the State’s argument won’t change the outcome of the case. The trial judge found that the error (i.e. prejudice) was not harmless under either a preponderance or beyond reasonable doubt standard.⁷² Even if the State is correct, suppression is still warranted.

Finally, the State claims that review should be granted in conjunction with *State v. Robison*.⁷³ *Robison* addresses a specifically different issue than the present case. A significant portion of the statutory

⁷⁰ Mot. for Discretionary Review, pg. 6; Statement of Grounds for Direct Review, pg. 6.

⁷¹ See *State v. Templeton*, 148 Wn.2d 193, 220, 59 P.3d 632 (2002). While Court this found right to counsel warning was defective, “there was no harm to the defendants ...”

⁷² Motion for Discretionary Review; Appendix B.

⁷³ Case No. #92944-1.

warnings were not given to the defendant. It is clear that the court in *Robison* focused more on the incomplete nature of the warning than on whether the warning was misleading. Regardless of this Court's decision whether or not to grant review in *Robison*, the suppression ruling in the present case is squarely supported by *Whitman Cty.*

There is no conflict within appellate decisions addressing suppression from a misleading warning. As such the superior court ruling to deny a Writ of Review was not probable error. There is no basis for granting review, and the State's request should be denied.

3. The present case does not address any issue of public interest or any fundamental or urgent issue of public importance. There is no indication other officers give the same misleading warning to other defendants. This case is distinguishable from other cases where review has been granted in the past.

The State provides speculative arguments why this case raises issues of public interest or public importance.⁷⁴ The breath test manual referred to by the State merely states that the warning given to drivers need only be substantially the same as the wording of the statute, but does not provide any guidance to officers what that means and makes no suggestion that using the word "voluntary" is appropriate.⁷⁵ A better

⁷⁴ Mot. For Discretionary Review, pg. 8; Statement of Grounds for Direct Review, pg. 6.

⁷⁵ Washington State Patrol, Breath Test Section, Training Manual, pg. 16 (rev. 11/18/14).

practice may be to instruct officers to correctly state the statutory warnings, but the issue here isn't the adequacy of the training manual.

There are a substantial number of DUI cases prosecuted annually in this State, but the State makes no claim how often the issue arises that the officer interjects the word "voluntary" into the warnings.⁷⁶ This case is clearly distinguishable from recent cases where direct review has been granted. For example, *State v. Baird*, (and the companion case *State v. Adams*)⁷⁷ addressed whether the State is required to obtain a warrant prior to administering a breath test. Cases such as *Seattle v. Clark-Munoz*,⁷⁸ *Kent v. Beigh*,⁷⁹ *State v. Trevino*,⁸⁰ *State v. Wittenbarger*,⁸¹ *State v. Straka*,⁸² and *Fircrest v. Jensen*,⁸³ all addressed issues affecting the administering of breath tests statewide.

This case, however, is identical to the issue in *Eide v. Dept. of Licensing*.⁸⁴ There, the court denied discretionary review under RAP

⁷⁶ The State cannot cite a single case where this specific issue has arisen other than the present case. For example, no allegation is made that officers in Chelan County frequently use the word "voluntary" when reading the implied consent warning.

⁷⁷ #90419-7, argued May 12, 2015.

⁷⁸ 152 Wn.2d 39, 93 P.3d 141 (2004).

⁷⁹ 145 Wn.2d 33, 32 P.2d 258 (2001).

⁸⁰ 127 Wn.2d 735, 903 P.2d 447 (1995).

⁸¹ 124 Wn.2d 467, 880 P.2d 517 (1994).

⁸² 116 Wn.2d 859, 810 P.2d 888 (1991).

⁸³ 158 Wn.2d 384, 143 P.3d 776 (2006).

⁸⁴ 101 Wn. App. 218, 3 P.3d 208 (2000).

2.4(d)(3) because a driver's challenge to a license revocation for refusing to blow into a breath test machine was not an issue of public interest. The court held that the issue involved only his specific conduct related to a breath test, and the likelihood of the same facts recurring in future cases was small.⁸⁵ The same result should be reached here.

VI. CONCLUSION

For the foregoing reasons Mr. Bowie asks this Court to deny the State's request for discretionary review and direct review.

RESPECTFULLY SUBMITTED this 6th day of June, 2016.



Ryan B. Robertson, WSBA #28245
Attorney for Mr. Bowie

⁸⁵ *Eide*, at 223.

IN THE SUPREME COURT
FOR THE STATE OF WASHINGTON

STATE OF WASHINGTON,) No. 93098-8
Petitioner,)
)
v.) DECLARATION
) OF SERVICE
CHELAN COUNTY DISTRICT)
COURT, HON. ROY S. FORE, and)
ROBERT JAMES BOWIE)
(real party in interest),)
Respondents.)

I certify under penalty of perjury under the laws of the State of Washington that on June 6th, 2016, I served a copy of Respondent Robert Bowie's answer to both the State's request for discretionary review and direct review on the following parties by depositing in the United States Mail a properly stamped and addressed envelope containing said document directed to:

1. Counsel for Petitioner: Mr. Andrew B. Van Winkle, Chelan County Prosecutor's Office, P.O. Box 2596, Wenatchee, WA 98807.
2. Respondent Hon. Roy S. Fore: Chelan County District Court, P.O. Box 2687, Wenatchee, WA 98807.
3. Former Counsel for Resp. Bowie: John Brangwin, Woods & Brangwin PLLC, 517 Mission St., Ste 2A, P.O. Box 4378, Wenatchee, WA 98807.

Furthermore, due to the expedited nature of this proceeding, I served Mr. Van Winkle a copy of Mr. Bowie's answer by email at: Andrew.VanWinkle@co.chelan.wa.us; and I served Mr. Brangwin at: John@wblawfirm.com.

Signed in SEATTLE, WA the 6th day of June, 2016.

A handwritten signature in black ink, appearing to read 'R. Robertson', written in a cursive style.

Ryan B. Robertson, WSBA #28245
Attorney for Mr. Bowie

OFFICE RECEPTIONIST, CLERK

From: OFFICE RECEPTIONIST, CLERK
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Supreme Court Clerk's Office

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Subject: State v. Bowie, #93098-8

Dear Clerk,

Attached please find Mr. Bowie's answer opposing the State's request for discretionary review and direct review.

Thank you,

- Ryan Robertson

--

ROBERTSON
LAW

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