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SUPREME COURT OF
THE STATE OF WASHINGTON

(Court of Appeals No. 77094-2-1)

SOLOMON MCLEMORE,

Petitioner,

v.

CITY OF SHORELINE

Respondent.

SUPPLEMENTAL BRIEF OF RESPONDENT,
CITY OF SHORELINE

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I. INTRODUCTION

Respondent, the CITY OF SHORELINE, submits this requested supplemental briefing to the Court for discretionary review. The respondent respectfully requests that this Court affirm the Petitioner's conviction for obstructing a law enforcement officer.

This case deals with a narrow issue: Whether a homeowner who purposefully obstructs an officer's lawful constitutional entry into his home may be punished for his behavior. Here, the warrantless entry into the home is beyond reproach. Where an officer is licensed to make an entry, a person's resistance, whether passive or active, to an officer's lawful entry may result in consequences. Solomon McLemore's conduct hindered, delayed, and obstructed the officer's ability to discharge their duties to ensure the safety of the occupants of the residence, thus justifying the conviction for obstructing a law enforcement officer.

II. ISSUE PRESENTED

When an officer's warrantless entry to confirm the safety of a domestic violence victim is permissible pursuant to the emergency doctrine, may the person hinder, delay or prevent entry with impunity?

III. STATEMENT OF THE CASE

On March 1, 2016, at approximately 2 a.m., Deputy Boyer, Deputy Dallon and Deputy Emmons all responded to a disturbance at 17721 15th Ave NE, in Shoreline, Washington. CP 297-298, 321-322, 359. When they arrived on scene, the reporting party approached them and advised them that he had heard a loud verbal argument coming from just south of the Deputies' location. *Id.* He further advised that he had called 911 to report a bunch of screaming and directed the Deputies to the area it was coming from. CP 298.

Deputy Boyer located the source of the shouting at the second story balcony on the west side of the building. CP 300-301, 361. The Deputy could hear a woman screaming and sounding as if she was under duress. CP 298. He heard her yelling things such as, "you can't leave me out here," "I'm going to call the police," and "let me go." *Id.* Deputy Boyer also heard her say something along the lines of "I'm reconsidering our relationship." CP 298, 324, 361. Deputy Emmons also heard her yelling that "she wanted to leave." CP 361. While the Deputies could hear the screams, they could not visually see up onto the second floor balcony where they were coming from. CP 301.

The Deputies located and immediately began knocking on the door, ringing the doorbell, and announcing their presence. CP 303-304,

325, 328, 362. The argument quickly ceased and no one from the residence responded. *Id.* Deputies became concerned that the female may be hurt. CP 303. After eight minutes of repeated knocking on the door, ringing the doorbell, and announcing their presence, Deputy Emmons aimed the patrol vehicle's spotlight at the balcony in a further attempt to make contact. CP 363-365. As other deputies were attempting to establish contact at the door, Deputy Emmons announced his presence as Shoreline Police and attempted to establish contact for approximately eight minutes using the vehicle's public address system. *Id.* Deputy Emmons advised through the PA system that they needed to speak with the occupants to make sure everything was okay. *Id.* There was still no response. *Id.* The Deputies attempted to run the license plate of a vehicle parked outside the residence, but dispatch was unable to locate a phone number. CP 365.

Shortly thereafter, the Deputies heard the distinct sound of glass breaking from the area of the balcony. CP 306- 307, 366. About forty seconds later, the Deputies heard glass shatter again. *Id.* Concerned for the safety and wellbeing of the female and any other occupants of the residence, the Deputies called the Shoreline Fire Department to request tools to breach the door. CP 309, 314, 372, 381.

As the Deputies began their efforts to make entry, Solomon McLemore finally established contact and began speaking to the Deputies

through the closed door; however, he still refused to open the door and allow officers to visually confirm the female's safety. CP 331-333, 370, 414. Deputy Emmons then heard McLemore instruct the female to tell the police that she was okay. CP 370-372. The female followed McLemore's command and stated that she was okay, but McLemore would not allow visual confirmation. *Id.* She also informed them that she had a baby in her arms. *Id.* Despite their pleas and efforts to determine the actual safety of the female, McLemore continued to be uncooperative and walked away from the door. *Id.*

After forced entry was made, McLemore was immediately arrested for obstructing law enforcement. *Id.* Only then was Deputy Boyer able to speak with the female occupant, Lisa Janson, to confirm her safety and wellbeing and that of the infant. CP 309, 314, 372-373, 381. Ms. Janson reported to the Deputy that McLemore had broken the glass out of anger. *Id.* Officer Boyer noted that McLemore appeared angry, irrational, upset, crying, hysterical, and under the influence of alcohol. CP 373-374.

During the investigation, it was discovered that McLemore had video recorded the incident and his interaction with police. CP 437, 446-447; Exhibit 8. During the trial, the jury heard audio recordings from this video. CP 436, 439. On the recording, McLemore admitted to hearing the police asking him to open the door so that they could verify that the

occupants were all okay. CP 429-430. However, McLemore continued to deny the officer's clear and audible requests to open the door. CP 444. Further on that recording, McLemore is heard commanding Ms. Janson in an aggressive tone to tell the police she was ok and, that when she talked to the police, she needed to appear mad. CP 440-441. He is also heard telling Ms. Janson in a threatening manner that if she went outside she would go to jail. CP 441. This recording corroborated what the police reported hearing through the closed door which further elevated their concern for Ms. Janson's safety.

Prior to his trial, McLemore challenged the City's evidence pursuant to a *Knapstad* motion to suppress.¹ The trial court subsequently denied that motion citing *State v. Steen*, 164 Wn. App. 789, 265 P.3d 901 (2011), *review denied*, 137 Wn.2d 1024 (2012), as the basis of its ruling. At trial, the City, during motions in limine, moved the court to exclude any reference by McLemore of the absence of a search warrant by the arresting officers pursuant to the court's rulings in the *Knapstad* motion. The court subsequently granted the City's motion. At the conclusion of trial, the jury returned a verdict of guilty.

McLemore appealed his conviction to the Superior Court challenging the trial court's denial of his *Knapstad* motion, the sufficiency

¹ *State v. Knapstad*, 107 Wn.2d 346, 349, 729 P.2d 48 (1986)

of the evidence to support his conviction, as well as its suppression of any mention of a lack of a search warrant. CP 211 - Brief of Appellant on RALJ. The RALJ court affirmed McLemore's conviction CP 533.

McLemore then sought discretionary review of the RALJ court's decision. Ultimately, this Court granted discretionary review of the Superior Court's ruling and immediately scheduled oral argument, restricting the City to a simultaneously filed "supplemental brief."

IV. ARGUMENT

A. AN OCCUPANT WHO REFUSES TO OPEN THE DOOR TO AN OFFICER WHO IS PROPERLY DEMANDING ADMITTANCE PURSUANT TO THE EMERGENCY EXCEPTION TO THE WARRANT REQUIREMENT MAY BE SANCTIONED FOR HIS ACTIONS.

The statute at issue here makes actions by an individual that impedes the duties of law enforcement a criminal act. RCW 9A.76.020 provides that if the individual willfully hindered, delayed, or obstructed a law enforcement officer in the discharge of the law enforcement officer's official powers or duties; and knew that the law enforcement officer was discharging official duties at the time then he is guilty of a crime.²

² RCW 9A.76.020 that provides in pertinent part, that "(1) A person is guilty of obstructing a law enforcement officer if the person willfully hinders, delays, or obstructs any law enforcement officer in the discharge of his or her official powers or duties."

Challenges to the constitutionality of a statute as applied is reviewed de novo. *State v. Steen*, 164 Wn. App. 789, 809, 265 P.3d 901 (2011), review denied, 173 Wn.2d 1024 (2012); *State v. E.J.J.*, 183 Wn.2d 497, 354 P.3d 815 (2015) (citing *State v. Abrams*, 163 Wn.2d 272, 282, 178 P.3d 1021 (2008)). "An as-applied challenge to the constitutional validity of a statute is characterized by a party's allegation that application of the statute in the specific context of the party's actions or intended actions is unconstitutional." *City of Redmond v. Moore*, 151 Wn.2d 664, 668-69, 91 P.3d 875 (2004). "A decision that a statute is unconstitutional as applied does not invalidate the statute but, rather, prohibits the statute's future application in a similar context." *Steen*, 164 Wn. App. at 804.

The lineage of case law given to us by the Court of Appeals, Washington State Supreme Court, United States Supreme Court, as well as other jurisdictions on the issue presented by McLemore provides a clear and concise description of the law and the boundaries therein. The law followed by the Superior Court and Court of Appeals and their respective decisions thereon, confirms that McLemore's conviction was based upon constitutionally sound rationale and supported by the deep tenants of existing law. Therefore, this Court must affirm his conviction.

1. **MCLEMORE'S RESISTIVE CONDUCT
IN RESPONSE TO THE WARRANTLESS
ENTRY CONSTITUTES OBSTRUCTING
WHEN THE EMERGENCY DOCTRINE
APPLIES.**

Despite the long-standing precedent to the contrary, McLemore claims that a person may resist or refuse to affirmatively assist an officer's entry pursuant to the emergency aid doctrine. Regardless of McLemore's belief in the legality of the police contact, the law states that his conduct may not impede the officer's duties, especially in light of the emergency doctrine. It is black letter law that a person may not be penalized for exercising a constitutional right. See, e.g., *U.S. v. Prescott*, 581 F.2d 1343, 1350-51 (9th Cir. 1978). A person may, however, be penalized for refusing to cooperate with a lawful order.

This principle applies when the lawful order is based upon a search warrant or other court order. See, e.g., *United States v. Nix*, 465 F.2d 90, 93-94 (5th Cir.), *cert. denied*, 409 U.S. 1013 (1972) (refusal to provide a court ordered handwriting exemplar); *State v. Gonzalez*, 109 A.3d 453 (Conn.), *cert. denied*, 136 S. Ct. 84 (2015) (refusal to cooperate with search warrant authorizing the collection of a buccal swab for DNA testing); *State v. Haze*, 218 Kan. 60, 542 P.2d 720 (1975) (refusal to provide court ordered handwriting exemplar).

Washington courts have applied this principle, allowing juries to

consider a refusal to cooperate as consciousness of guilt. *State v. Nordlund*, 113 Wn. App. 171, 188, 53 P.3d 520 (2002), *review denied*, 149 Wn.2d 1005 (2003) (refusal to submit to court ordered body hair sampling). A refusal to cooperate may also result in a contempt finding and a prolonged period of pre-trial detention. *See State v. Miller*, 74 Wn. App. 334, 873 P.2d 1197 (1994) (14-month long civil contempt incarceration for refusing to provide a handwriting exemplar).

This principle also applies when a defendant refuses to comply with a lawful order that is based upon an exception to the warrant requirement *See, e.g., United States v. Terry*, 702 F.2d 299, 314 (1983) (resistance to providing prints pursuant to a lawful custodial arrest). A person can even be criminally prosecuted for refusing to comply with an officer's request to conduct a lawful warrantless search. *See, e.g., Birchfield v. North Dakota*, ___ U.S. ___, 136 S. Ct. 2160, 2186, 195 L. Ed. 2d 560 (2016) (affirming a conviction for refusing to submit to a warrantless breath test as that search was a permissible search incident to arrest for drunk driving); *State v. Colosimo*, 669 N.W.2d 1 (Minn. 2003), *cert. denied*, 541 U.S. 988 (2003) (refusing to submit to an officer's lawful request to inspect open areas of a motorboat used to transport game fish).

Washington courts allow juries to consider a defendant's refusal to submit to a constitutionally authorized warrantless search as evidence of

guilt. *See generally State v. Baird*, 187 Wn.2d 210, 386 P.3d 239 (2016) (a driver's refusal to take a breath test is admissible as evidence of guilt because a driver has no constitutional right to refuse a breath test, which falls under the search incident to arrest exception to the warrant requirement); *State v. Mecham*, 186 Wn.2d 128, 380 P.3d 414 (2016) (refusal to perform a field sobriety test may be considered in deciding the defendant's guilt as the defendant did not have a constitutional right to refuse to perform the tests).

As a rule, a person has a constitutional right to passively³ refuse a police officer's request to enter his or her home. *See generally Camara v. Mun. Court*, 387 U.S. 523, 87 S. Ct. 1727, 18 L.Ed.2d 930 (1967). There is, however, no constitutional right to refuse entry under the emergency doctrine. In *Georgia v. Randolph*, 547 U.S. at 126 S. Ct. 1515, 164 L. Ed. 2d 208 (2006), the Court held that a co-occupant has a constitutional right to override another occupant's consent to a police officer's entry into the home. The Court recognized that an occupant does not, however, have a constitutional right to deny entry under the emergency exception or

³A person is not allowed to use force to repel an officer's unconstitutional acts. *See generally State v. Valentine*, 132 Wn.2d 1, 935 P.2d 1294 (1997) (even if an arrest was unlawful, defendant was not permitted to use force to resist an arrest where the arrest did not involve excessive force); *State v. Mierz*, 127 Wn.2d 460, 901 P.2d 286 (1995) (a defendant may be convicted of an assault against police officers following the officers' illegal entry).

exigency exception to the warrant requirement:

No question has been raised, or reasonably could be, about the authority of the police to enter a dwelling to protect a resident from domestic violence; so long as they have good reason to believe such a threat exists, it would be silly to suggest that the police would commit a tort by entering, say, to give a complaining tenant the opportunity to collect belongings and get out safely, or to determine whether violence (or threat of violence) has just occurred or is about to (or soon will) occur, however much a spouse or other co-tenant objected. . . . Thus, the question whether the police might lawfully enter over objection in order to provide any protection that might be reasonable is easily answered yes. *See* 4 LaFave § 8.3(d), at 161 ("[E]ven when . . . two persons quite clearly have equal rights in the place, as where two individuals are sharing an apartment on an equal basis, there may nonetheless sometimes exist a basis for giving greater recognition to the interests of one over the other [W]here the defendant has victimized the third-party . . . the emergency nature of the situation is such that the third-party consent should validate a warrantless search despite defendant's objections" (internal quotation marks omitted; third omission in original)). The undoubted right of the police to enter in order to protect a victim, however, has nothing to do with the question in this case, whether a search with the consent of one co-tenant is good against another, standing at the door and expressly refusing consent.

Georgia v. Randolph, 547 U.S. 103, 118-19, 126 S. Ct. 1515, 1525-26 (2006).

Article I, section 7 permits warrantless entries under certain jealously and carefully drawn exceptions to the warrant requirement, two of which are emergency and community caretaking. *See generally State v.*

Schultz, 170 Wn.2d 746, 753-54, 248 P.3d 484 (2011).⁴ (acknowledging that the emergency aid exception to a warrantless entry is consistent with Const. art. I, sec. 7); *State v. Hos*, 154 Wn. App. 238, 247, 225 P.3d 389, review denied, 169 Wn.2d 1008 (2010) (expressly holding that community caretaking is an exception to article I, section 7's warrant requirement.) Both the emergency aid and community caretaking exceptions permit warrantless entry in domestic violence situation.

Domestic violence presents unique challenges for law enforcement. Domestic violence situations can be volatile and quickly escalate into significant injury. Domestic violence often, if not usually, occurs within the privacy of a home. Our legislature has recognized that the risk of repeated and escalating acts of violence is greater in the domestic violence context. RCW 10.99.040(2)(a). The Legislature has sought to provide "maximum protection" to a victim of domestic violence through a policy of early intervention. RCW 10.99.010. The Court of Appeals has recognized that "[p]olice officers responding to a domestic violence report have a duty to ensure the preset and continued safety and well-being of the occupants." *Raines*, 55 Wn. App. At 465.

Schultz, 170 Wn.2d at 755-56.

Both the court of appeals and the federal courts have upheld the constitutionality of warrantless entries in domestic violence cases. *See, e.g. United States v. Black*, 482 F.3d 1035 (9th Cir.), cert. denied, 128 S.

⁴ The Court "recognize[d] that domestic violence presents unique challenges to law enforcement and courts," and stated "that the likelihood of domestic violence may be considered by courts when evaluating whether the requirements of the emergency aid exception to the warrant requirement have been satisfied." *Schultz*, 170 Wn.2d at 750.

Ct. 612 (2007) (warrantless entry was justified under the emergency exception during a domestic violence incident to ensure the wellbeing of the potential victim who was believed to be injured); *State v. Steen*, 164 Wn. App. 789, 800-802, 265 P.3d 901, 908 (2011) (warrantless entry into a trailer was justified upon seeing a distraught woman leaving the area and getting no response at the door). *State v. Johnson*, 104 Wn. App. 409, 16 P.3d 680 (2001) (emergency aid exception justified a warrantless entry after a report that a victim of domestic violence had locked herself in a bathroom, the defendant had a cut on his wrist and was slow to answer questions about the location of the victim.); *State v. Jacobs*, 101 Wn. App. 80, 2 P.3d 974 (2000) (warrantless entry was justified under the emergency aid exception to conduct a sweep for additional potential victims of domestic violence); *State v. Menz*, 75 Wn. App. 351, 353, 880 P.2d 48 (1994) (warrantless entry was justified when officers responded to a report of domestic violence but got no response upon knocking several times); *State v. Raines*, 55 Wn. App. 459, 778 P.2d 538 (1989), review denied, 113 Wn.2d 1036 (police officers responding to a domestic violence report have a duty to ensure the present and continued safety and well-being of the occupants of a home); *State v. Lynd*, 54 Wn. App. 18, 771 P.2d 770 (1989) (warrantless entry was justified when a person called 911 and hung up, return calls met a busy signal, defendant admitted

outside his home to assaulting the victim, the defendant was packing a car as if preparing to leave, and the defendant did not want the officer to look in the house).

In this instant case, the court found that the warrantless entry was lawful as the deputies were responding to a domestic disturbance call, could hear a female in distress saying she was calling police and asking to be let go. Deputies attempted to initiate contact by knocking on the door and were met by the immediate cessation of all audible arguing. On the heels of this silence, Deputies heard the sounds of shattering glass, not once but twice. While attempting to negotiate with McLemore and commanding him to open the door, Deputies heard McLemore command the female half to instruct officers that she was ok. All of these factors led the trial court to determine that the entry of McLemore's residence was lawful pursuant to the emergency aid exception. This specific determination as to the applicability of the emergency aid exception was not challenged on appeal. CP 211.

Since McLemore did not have a constitutional right to deny entrance to the police officers under the facts of this case, his delaying tactics may result in consequences. In this case, his conviction for obstruction was proper because his affirmative actions caused delay and

impeded the Deputy's ability to ensure the safety of all inside the residence. While McLemore did eventually speak to the Deputy's through the closed door after several minutes of knocking and ringing the doorbell, he refused to open the door. Deputy's advised him of the need to ensure the safety of all those present yet to no avail. Deputy Emmons then heard McLemore instruct the female to tell the police that she was okay. In addition to this command, McLemore told the female in a threatening manner that she had better appear "mad" when she spoke to police and then threatened her with her own impending arrest if she opened the door. The female complied with McLemore's command and stated that she was okay, but McLemore would not allow visual confirmation. Despite their pleas and efforts to determine the actual safety of the female, McLemore continued to be uncooperative and walked away from the door. Given McLemore's actions, Deputies were not able to gain entry and ensure the safety of the occupants until some eight minutes after initiating contact.

McLemore claims he is immune from prosecution for refusing to open his door. *See* Motion for Discretionary Review at 11-15. He cites numerous cases in which courts held that an individual cannot be punished for refusing to open his door to a police officer who seeks entry. While McLemore correctly cites the holdings of those cases, they are irrelevant in the instant case and his reliance on them is misguided. Each of the cited

cases involved a police officer who demanded entry without a warrant and under circumstances in which no exception to the warrant requirement existed. *See generally Camara v. Mun. Court*, 387 U.S. 523, 87 S. Ct. 1727, 18 L.Ed.2d 930 (1967) (Appellant's refusal to allow inspectors access to his apartment was not unlawful as there was no emergency or exigent circumstances and the inspectors had ample opportunity to get a warrant yet chose not to); *United States v. Prescott*, 581 F.2d 1343, 1350-51 (9th Cir. 1978), (a home occupant can "passively" refuse admission to an officer who demands entry but presents no warrant, and no warrant exception exists.); *State v. Berlow*, 665 A.2d 404, 284 N.J. Super. 356 (N.J.Super.L. 1995) (An individual may not be sanctioned for passively denying entry into his residence when the officers do not have a search warrant and no emergency exception existed).; *Strange v. City of Tuscaloosa*, 652 So.2d 773 (Ala. 1994) (In an investigation of a disturbance in the area of her residence, police sought entry into her home. The defendant's actions of blocking the officers to prevent a warrantless search of her home was upheld as the officers did not possess a search warrant and no emergency exception applied.).

Here, McLemore actions were significantly more than simply not unlocking his door. The State of Washington as well as Courts across the country are steadfast in their recognition that there is no right to

affirmatively resist or refuse to comply with law enforcement resulting in the hindrance, delay, or obstruction of their duties.

In Washington, Division II of the Court of Appeals in *State v. Steen*, 164 Wn. App. 789, 800-802, 265 P.3d 901, 908 (2011) upheld the appellant's conviction for Obstructing in very similar facts and circumstances to McLemore's case. In *Steen*, officers responded to a disturbance allegedly involving three people. Upon arrival, officers observed a woman who was visibly upset and had mascara running down her cheeks. *Id.* The officers began looking around the property for other two individuals and saw the defendant's trailer. *Id.* Officers began knocking very loudly on the trailer's door and announced that they were from the Pierce County Sheriff's department. *Id.* Pursuant to the emergency aid exception to the warrant requirement, the Officers entered the trailer through a window, and upon entry found the defendant who claimed that he was "just sleeping." *Id.* The State charged Steen with obstructing a law enforcement officer. *Id.* A jury convicted, and the defendant appealed. *Id.*

On appeal, Steen argued that the State failed to present sufficient evidence at trial that he obstructed a law enforcement officer. *Id.* More specifically, he alleged that there was insufficient evidence that (1) he

knew the officers were discharging their official duties, and (2) the mere act of remaining silent, without more, was insufficient to establish that he hindered, delayed, or obstructed the officers. *Id.* The Court of Appeals held that a jury could have reasonably inferred from the facts, viewed in the light most favorable to the State, that Steen knew the officers were discharging their official duties. In making this determination, the court relied on the inference that Steen had heard the officers' identification and commands but decided not to comply, and knew that the officers wanted to look inside the trailer to investigate a recent disturbance involving a woman. *Id.* Secondly, the Court found that Steen's action of not opening the door, not just his silence, provided sufficient evidence that he willfully hindered, delayed, or obstructed the officers in their discharge of official duties. *Id.* The court explained that "any rational fact finder could have reasonably inferred that Steen ignored the officers' commands." *Id.* The court noted that the legislature's intent in the plain language of RCW 9A.76.020 was to criminalize an individual's willful failure to obey a lawful police order where the failure to obey willfully hinders, delays, or obstructs the officer in the discharge of his or her community caretaking functions. *Id.* See also, *State v. Contreras*, 92 Wn. App. 307, 966 P.2d 915 (1998). (Disobeying an officer's orders to put his hands up into view and exit the vehicle was sufficient to support a conviction for obstructing).

One of the leading cases setting forth this rationale is *United States v. Ferrone*, 438 F.2d 381, (3d. Cir. 1971), cert denied, 402 U.S. 1008, 91 S.Ct. 2188, 29 L.Ed.2d 430 (1971). In *Ferrone*, the Third Circuit Court of Appeals held that a person does not have a right to forcibly resist the execution of a search warrant by a peace officer or government agent, even though the warrant may subsequently be found invalid. *Id.* at 390. There, the appellant was convicted of, inter alia, assaulting, resisting and opposing Internal Revenue Service agents who were attempting to execute a search warrant of his apartment and a search warrant for his person. *Id.* at 383. The appellant contended that the searches were unlawful and therefore he had a right to resist arrest. *Id.* at 387. The Third Circuit stated that

“[s]ociety has an interest in securing for its members the right to be free from unreasonable searches and seizures. Society also has an interest, however, in the orderly settlement of disputes between citizens and their government; it has an especially strong interest in minimizing the use of violent self-help in the resolution of those disputes. We think a proper accommodation of those interests requires that a person claiming to be aggrieved by a search conducted by a peace officer pursuant to an allegedly invalid warrant test that claims in a court of law and not forcibly resist the execution of the warrant at the place of search. The develop[ment] of legal safeguards in the Fourth, Fifth, Sixth, and Fourteenth Amendment fields in recent years has provided the victim of an unlawful search with realistic and orderly legal alternatives to physical resistance.” *Id.* at 390 (emphasis added).

The *Ferrone* Court, however, expressly stated that it was not deciding whether a person would, under some circumstances, have a right to resist an unlawful warrantless search. But other courts have concluded the answer to that question is a resounding “NO.”

Our sister states authorize criminal prosecutions for refusing to admit police officers when the emergency or exigency exception to the warrant applies.

In *State v. Line*, 121 Haw. 74, 214 P.3d 613 (2009), the Hawaii State Supreme Court recognized the inherent dangers in protecting such conduct even in light of a perceived illegal action by the government such as a warrantless search in absence of exigent circumstances. In *Line*, officers were in pursuit of a suspect who fled into his mother’s residence through a sliding glass door. The suspect’s mother braced herself against the slider door and refused to open it for the officer’s, all the while insisting they leave unless they had a warrant. Officers were able to forcibly enter the residence, ultimately sustaining injuries by the mother in the process. The *Line* court opined that the risk of danger associated with physically resisting such an intrusion at the time it occurs, outweighs whatever vindication of personal rights might be accomplished through physical resistance at that moment. *Id.* at 625.

In *Dolson v. United States*, 948 A.2d 1193, 1201 (D.C. 2008), an officer suspected the defendant of engaging in drug activity. The defendant retreated to his residence through a gate with the officer in pursuit. The defendant, however, prevented the officer from entering the property by holding the gate closed. The defendant was ultimately convicted of assaulting, resisting, opposing, impeding, intimidating, or interfering with a police officer based upon his actions at the gate. [J]ust as no one has the right to resist an unlawful arrest, no one has the right to resist an unlawful entry to make an arrest. *Id.* In holding that there is no right to resist an unlawful entry, the court stated that “[t]he rationale for this rule is firmly rooted in public policy: “If resistance to an arrest or a search made under the color of law is allowed, violence is not only invited but can be expected. Self-help exposes both the officer and the suspect to graver consequences than an unlawful arrest.” *Id.* at 1202, (citing *State v. Hatton*, 116 Ariz. 142, 568 P.2d 1040, 1045-1046 (1977) (en banc) (citations omitted); see also *United States v. Pryor*, 32 F.3d 1192, 1195 (7th Cir.1994) (explaining that citizens must “endure even an unlawful arrest without resorting to force” because the “indignity and inconvenience” of an improper arrest do not outweigh the potential for injuries when a suspect is left to “make their own snap judgments about the legality of official demands”).

Furthermore, an individual wronged by an unlawful search or arrest has recourse through legal means, such as the exclusionary rule or civil claims for constitutional rights violations, and need not resort to physical violence in order to protect his or her rights. *Id.* at 1202 (citing *Hatton*, 568 P.2d at 1045). See also, *State v. Hoagland*, 270 N.W.2d 778 (1978). (defendant's assertion that they had a right to resist a search which they believed illegal was expressly rejected. No such right is recognized.); *State v. Holemann*, 103 Wn.2d 426, 693 P.2d 89 (1985) (an individual may not obstruct what is believed to be illegal police conduct); See also *State v. Reece*, 222 N.J. 154, 117 A.3d 1235 (2015) (a suspect is required to cooperate with the investigating officer even when the legal underpinning of the encounter is questionable. Defendant's conduct in hampering law enforcement entry under emergency aid doctrine into his home constitutes obstruction); *State v. Colosimo*, 669 N.W.2d 1 (Minn. 2003), cert. denied, 541 U.S. 988 (2003) (refusing to submit to an officer's lawful request to inspect open areas of a motorboat used to transport game fish.); *State v. Wiedenheft*, 136 Idaho 14, 27 P.3d 873 (2001) (an individual may not resist or prevent an officer from making a warrantless entry into a residence made under exigent circumstances even if they believe the entry is unlawful.)

McLemore's actions here went well beyond that of mere "passive" refusal to open the door. His actions of refusing a lawful order by a police officer, in addition to interfering with a witness, regardless of his belief in the validity of the intrusion constitute active, if not forcible, resistance. Thus constituting obstructing. It is key to note that McLemore concedes that the Deputies in this incident were acting within their official powers and duties. Further, McLemore acknowledges that the Deputies were within their rights to enter the home pursuant to exigent circumstances and the emergency doctrine.

Similar to the facts in *Steen*, McLemore did not remain silent or simply passive, but actively refused to comply with the police commands. In addition, with tones of intimidation and control, actually tampered with a potential witness by forcing her to tell police that she was alright, make her appearance to be upset, and manipulated her ability and willingness to cooperate with the investigation by including threats of her impending arrest should she open the door and exit the residence. These actions impeded the Deputy's ability to ensure the safety of the occupants of the residence for nearly 10 minutes which can be the difference between life and death in some circumstances.

This Court has repeatedly recognized that the officers have a duty to ensure the safety of all the occupants of the residence, especially in

domestic violence situations. The defendant's action here of actively refusing to open the door *in conjunction with* commanding the victim as to what to say and how to act, as well as making threats of impending arrest if she cooperated, can be considered for no other purpose than to obstruct the Deputies' ability to ensure and determine the occupants' *actual* safety and wellbeing. Any belief McLemore had in the legality of the warrantless entry is of no import in the analysis of the legality of his actions.

Furthermore, given the exigent circumstances that existed in this matter, McLemore constitutional rights against an unreasonable search were not implicated nor were they violated. Thus, under the lineage of case law presented above, McLemore may be constitutionally sanctioned for his obstructive actions.

B. THE LAWFULNESS OF THE WARRANTLESS ENTRY DID NOT PRESENT A JURY QUESTION.

McLemore does not dispute the lawfulness of the warrantless entry under the emergency or community caretaking exceptions. He does, however, argue that it was error to prohibit him from asking the jury to consider the absence of a warrant in determining his guilt. See Motion for Discretionary Review, at 3 (question 3), and 18. McLemore's position is not supported by precedent.

It is established in this state that the lawfulness of the police entry is a question for the court. *State v. Hoffman*, 116 Wn.2d 51, 97, 804 P.2d 577 (1991) The lawfulness of an entry only becomes a jury question if the issue is injected into the trial by reason of the charging language of the information. *Id.*, at 98. As an example, when a defendant is charged with resisting arrest, the lawfulness of the apprehension is an element of the crime that must appear in the charging document. *See State v. Hutton*, 7 Wn. App. 726, 502 P.2d 1037 (1972). The lawfulness of the officer's conduct is not an element of obstructing a law enforcement officer. *See generally State v. Hudson*, 56 Wn. App. 490, 496-97, 784 P.2d 533 (1990) (an officer is performing official duties so long as there is no evidence they were acting in bad faith). *See also* RCW 9A.76.020; WPIC 120.02. In the instant case, McLemore has not claimed that the officers were acting in bad faith. Thus, the question of whether the officer's lawfully demanded entry was properly resolved by the trial judge.⁵

The absence of a warrant is also irrelevant to the mens rea of the crime of obstruction. The City was required to establish that McLemore

⁵ Article IV, section 16 of the Washington Constitution requires the judge to "declare the law" to juries. Pursuant to this constitutional provision, the trial judge would, under the circumstances of this case, be required to instruct the jury as follows: "The officers' demand for admission without a warrant was lawful pursuant to the emergency or community caretaking exception to the warrant requirement."

"willfully hinder[ed], delay[ed] or obstruct[ed]." RCW 9A.76.020; WPIC 120.02.01; RCW 9A.08.010(4). The City was not required to establish that McLemore knew that his conduct was unlawful. *See, e.g., State v. Minor*, 162 Wn.2d 796, 802, 174 P.3d 1162 (2008) (ignorance of the law is not a defense, the knowledge element in possession of a firearm is knowledge that the firearm is in the possession of the defendant, not knowledge of the illegality of the firearm possession); *State v. Reed*, 84 Wn. App. 379, 384, 928 P.2d 469 (1997) ("ignorance of the law is no excuse. . . a good faith belief that a certain activity does not violate the law is also not a defense in a criminal prosecution"). A trial court does not err by excluding irrelevant evidence. *See generally State v. Maupin*, 128 Wn.2d 918, 924-25, 913 P.2d 808 (1996) (a defendant's constitutional right to present a defense does not include the right to present irrelevant evidence); ER 402 ("Evidence which is not relevant is not admissible.").

C. SUFFICIENT EVIDENCE EXISTED TO SUPPORT MCLEMORE'S CONVICTION FOR OBSTRUCTING.⁶

⁶ McLemore assigns error to the trial court's denial of his *Knapstad* motion in his motion for discretionary review. *See generally* Motion for Discretionary Review at 3 (question 3) and 8. A denial of a *Knapstad* motion is not appealable after trial. *State v. Zakel*, 61 Wn. App. 805, 811 n.3, 812 P.2d 512 (1991), *aff'd* on other grounds, 119 Wn.2d 563, 834 P.2d 1046 (1992). A post-trial appeal from the denial of a *Knapstad* motion is properly treated as a challenge to the sufficiency of the evidence. *State v. Olson*, 73 Wn. App. 348, 357 n.6, 869 P.2d 110 (1994).

When reviewing a sufficiency of the evidence challenge, the Court must view the evidence in the light most favorable to the State in order to determine whether any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. *State v. Hosier*, 157 Wn.2d 1, 8, 133 P.3d 936 (2006). Thereby, this Court must interpret all reasonable inferences in the [City's] favor. *Hosier*, 157 Wn.2d at 8.

"A person is guilty of obstructing a law enforcement officer if the person willfully hinders, delays, or obstructs any law enforcement officer in the discharge of his or her official powers or duties." RCW 9A.76.020 (1). "Hinder" means "to make slow or difficult the course or progress of." *WEBSTER'S THIRD NEW INT'L DICTIONARY* 1070 (2002). "Delay" means "to stop, detain, or hinder for a time ... to cause to be slower or to occur more slowly than normal." *WEBSTER'S* at 595. "Obstruct" means "to be or come in the way of: hinder from passing, action, or operation." *WEBSTER'S* at 1559. A person acts willfully when he acts knowingly with respect to the material elements of the offense. RCW 9A.08.010 (4). *State v. Steen*, 164 Wn. App. at 798.

As previously articulated, The *Steen* court relied on a very similar factual pattern and determined the evidence sufficient to uphold the conviction for obstructing. Based on those facts the *Steen* Court found that a jury could reasonably infer that Steen heard the officers'

identification and commands yet decided not to comply, and knew they were trying to investigate a disturbance involving a woman. *Id.*

Furthermore, the *Steen* court analyzed these facts while cognizant that speech alone, or refusal to speak for that matter, cannot be grounds for holding a suspect criminally liable for the charge of obstructing. *Id.* at 800. See also *State v. E.J.J.*, 183 Wn.2d 497, 354 P.3d 815 (2015); *State v. Williams*, 171 Wn.2d 474, 251 P.3d 877 (2011). Ultimately, the Court concluded that the mere conduct that was punishable under the statute was the refusal to open the trailer door and exit with his hands up. *Id.* at 802. It further opined that the legislature's intent was to criminalize and individuals willful failure to obey a lawful police order where the failure to obey willfully hinders, delays, or obstructs the officer in the discharge of his or her community caretaking functions. *Id.* at 802.

Similarly, McLemore's case involved a domestic disturbance; a distressed female; had law enforcement arrive in identifiable patrol cars and uniforms; included deputies knocking very loudly and identifying themselves; a defendant that did not or openly refused to comply with orders to open the door.

However, the facts here are perhaps even more persuasive than *Steen*. McLemore concedes that he was well aware that the police were at his door and that they were there due to a 911 call. He further

acknowledges that these Deputies were carrying out their official duties as law enforcement. The fact that the defendant directed the victim as to what to say to police, and how to say it, and not allow her to open the door, makes it clear that McLemore's actions in addition to his words were intended to thwart the officer's duties. Moreover, McLemore's recording of the entire incident from his perspective inside the home is further evidence that he was well aware of law enforcement presence as well as the reasons for it.

McLemore argues that the evidence is insufficient to support a conviction for obstruction because Ms. Janson testified that he did not prevent her from opening the door if she chose to. The jury, however, heard conflicting testimony from Deputies Emmons, Boyer and Dallan. These officers testified that they heard McLemore instruct Ms. Janson as to what to say. In addition, the jury was given a recording made by McLemore himself that depicted the threatening manner in which he spoke his commands to her and the demand on the way she appear to police. Further, that same video showed McLemore threatening Ms. Janson with her own arrest should she open the door. The jury's verdict establishes that they credited the officers' testimony as well as the video evidence over that of Ms. Janson. The jury's credibility determination is not subject to review by this Court. *See generally State v. Camarillo*, 115

Wn.2d 60, 71, 794 P.2d 850 (1990) (“Credibility determinations are for the trier of fact and cannot be reviewed on appeal.”).

McLemore relies on *State v. Williams* as support for his contention that he had no duty to comply with the officers commands. The *Williams* court held that “some conduct in addition to making false statements is required to support an obstruction conviction.” *State v. Williams*, 171 Wn.2d at 485. As stated above, *Steen* directly acknowledged the holdings of *Williams*, but held that Steen’s conduct met and surpassed *William’s* requirements, as his refusal to open the trailer door and exit the trailer with his hands up amounted to “conduct” that was punishable under the obstruction statute. *State v. Steen*, 164 Wn. App. 789, 800-802, 265 P.3d 901, 908 (2011). Similarly, in our case, McLemore verbally and physically refused to open the door, would not exit the apartment when asked to do so, and orchestrated Ms. Janson’s responses, statements, and actions with police.

McLemore’s arguments, moreover, turn the standard of review on its head. McLemore presents the facts in the light most favorable to him. But review for sufficiency of the evidence requires an appellate court to view the evidence in the light most favorable to the City and to make all reasonable inferences in favor of the City. An appellate court must affirm the conviction if it is satisfied there is sufficient evidence to convince a

rational trier of fact that the defendant is guilty beyond a reasonable doubt. This test does not require the City to convince the appellate court that the defendant is guilty beyond a reasonable doubt – just that a rational trier of fact could so conclude. *State v. Salinas*, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992); *State v. Green*, 94 Wn.2d 216, 616 P.2d 628 (1980).

This Court should not depart from this well-settled body of law and it's analysis as applied to these facts. In doing so, this Court must find that there was sufficient evidence for any rational trier of fact to convict McLemore of Obstructing a Law Enforcement Officer. In viewing the facts in the light most favorable to the City, it is clear that overwhelming evidence was presented to prove each of the essential elements of the crime beyond a reasonable doubt. As such, there was sufficient evidence to support his conviction beyond a reasonable doubt and McLemore's conviction for Obstructing a Law Enforcement officer must be allowed to stand.

V. CONCLUSION

McLemore did not have a constitutional right to resist or refuse to comply with law enforcement's orders to allow entry into his residence as the demand was lawful under the emergency exception to the warrant requirement. His actions were more than merely passive. They actively

hindered, obstructed and delayed law enforcement from conducting their community caretaking duties by thwarting their efforts to ensure the safety of all the residents in response to a domestic disturbance 911 call. McLemore's conduct delayed the ability to carry out their duties and interfered with the officer's ability to get true and accurate information regarding the safety of the occupants. Furthermore, his conduct was not grounded in constitutionally protected speech or conduct. For these reasons, and because the evidence of his conduct was sufficient to establish all elements of the crime of Obstructing, this Court must deny McLemore's appeal and his conviction for Obstructing a Law Enforcement Officer must be upheld.

Respectfully submitted this 7th Day of September, 2018,



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SHORELINE PROSECUTOR'S OFFICE

September 07, 2018 - 2:29 PM

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Superior Court Case Number: 16-1-07811-3

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