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STATE OF WASHINGTON
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No. 96017-8

THE SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Petitioner,

v.

DAVID MORGAN,

Respondent.

ON APPEAL FROM THE SUPERIOR COURT OF THE
STATE OF WASHINGTON FOR SNOHOMISH COUNTY

SUPPLEMENTAL BRIEF OF RESPONDENT

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TABLE OF CONTENTS

A. INTRODUCTION 1

B. ISSUES 1

C. STATEMENT OF FACTS 1

D. ARGUMENT 4

1. The State did not prove exigent circumstances justified its warrantless seizure of Mr. Morgan’s clothing. 4

 a. Exigent circumstances justifies a warrantless search only where the officer is faced with a choice of “now or never.” 4

 b. The State’s claim that evidence would be lost to dissipation or cross-contamination is a fact specific inquiry that must be supported by the evidence. 5

 c. The Court of Appeals was correct to reject the State’s claim of exigent circumstances because the officers exhibited no urgency in collecting Mr. Morgan’s clothing and the State presented no testimony to support its claim of dissipation or destruction of the evidence. 8

2. The seizure of Mr. Morgan’s clothing was not justified under the plain view exception. 10

 a. The trial court and Court of Appeals properly rejected the State’s claim that the warrantless seizure was justified by the plain view exception because the officer was sent to collect the clothing and conducted a search to find it. 10

 b. This Court has long established that under article I, section 7, the plain view exception requires the officer’s discovery of the evidence be “inadvertent,” and this Court should reject the State’s invitation to eliminate this requirement. 14

3. As the Court of Appeals held, reversal is required..... 19

E. CONCLUSION 20

TABLE OF AUTHORITIES

Washington Supreme Court

<i>State v. Baird</i> , 187 Wn.2d 210, 386 P.3d 239 (2016).....	4
<i>State v. Chrisman</i> , 94 Wn.2d 711, 619 P.2d 971 (1980).....	11
<i>State v. Daugherty</i> , 94 Wn.2d 263, 616 P.2d 649 (1980).....	13
<i>State v. Garvin</i> , 166 Wn.2d 242, 207 P.3d 1266 (2009)	4, 11
<i>State v. Hatchie</i> , 161 Wn.2d 390, 166 P.3d 698 (2007)	16
<i>State v. Hendrickson</i> , 129 Wn.2d 61, 917 P.2d 563 (1996)	4, 5
<i>State v. Ibarra-Cisneros</i> , 172 Wn.2d 880, 263 P.3d 591 (2011).....	19
<i>State v. Jones</i> , 146 Wn.2d 328, 45 P.3d 1062 (2002).....	12
<i>State v. Kingsley</i> , 75 Wn.2d 552, 452 P.2d 545 (1969).....	17
<i>State v. Kull</i> , 155 Wn.2d 80, 118 P.3d 307 (2005).....	11, 12, 18, 19
<i>State v. La Pierre</i> , 71 Wn.2d 385, 428 P.2d 579 (1967)	17
<i>State v. Ladson</i> , 138 Wn.2d 343, 979 P.2d 833 (1999).....	19
<i>State v. McKinney</i> , 148 Wn.2d 20, 60 P.3d 46 (2002)	16
<i>State v. Montague</i> , 73 Wn.2d 381, 438 P.2d 571 (1968).....	17
<i>State v. Myers</i> , 117 Wn.2d 332, 815 P.2d 761 (1991).....	18
<i>State v. Myrick</i> , 102 Wn.2d 506, 688 P.2d 151 (1984)	16
<i>State v. O’Neill</i> , 148 Wn.2d 564, 62 P.3d 489 (2003).....	18, 19
<i>State v. Ortega</i> , 177 Wn.2d 116, 297 P.3d 57 (2013)	16
<i>State v. Otton</i> , 185 Wn.2d 673, 374 P.3d 1108 (2016).....	18
<i>State v. Parker</i> , 139 Wn.2d 486, 987 P.2d 73 (1999).....	12, 16

<i>State v. Patterson</i> , 112 Wn.2d 731, 774 P.2d 10 (1989)	5
<i>State v. Reep</i> , 161 Wn.2d 808, 167 P.3d 1156 (2007).....	18
<i>State v. Tibbles</i> , 169 Wn.2d 364, 236 P.3d 885 (2010).....	4, 5

Washington Court of Appeals

<i>City of Seattle v. Pearson</i> , 192 Wn. App. 802, 369 P.3d 194 (2016).....	6
<i>State v. Inman</i> , 2 Wn. App. 2d 281, 409 P.3d 1138 (2018).....	7

United States Supreme Court

<i>Arkansas v. Sanders</i> , 442 U.S. 753, 99 S. Ct. 2586, 61 L. Ed. 2d 235 (1979).....	4
<i>Birchfield v. North Dakota</i> , __ U.S. __, 136 S. Ct. 2160, 2174, 195 L. Ed. 2d 560 (2016)	5
<i>Coolidge v. New Hampshire</i> , 403 U.S. 443, 91 S. Ct. 2022, 29 L. Ed. 2d 564 (1971).....	14, 15, 17
<i>Horton v. California</i> , 496 U.S. 128, 110 S. Ct. 2301, 110 L. Ed. 2d 112 (1990).....	15, 16, 18
<i>Missouri v. McNeely</i> , 569 U.S. 141, 133 S. Ct. 1552, 185 L. Ed. 2d 696 (2013).....	5, 6, 7, 8
<i>Roaden v. Kentucky</i> , 413 U.S. 496, 93 S. Ct. 2796, 37 L. Ed. 2d 757 (1973).....	5

Constitutional Provisions

Const. art. I, § 7	4
U.S. Const. amend. IV	14

A. INTRODUCTION

Police seized David Morgan's clothing from his hospital room without a warrant and used evidence obtained from the clothing against him at trial. The Court of Appeals reversed after finding the State failed to prove the warrantless seizure was justified by an exception to the warrant requirement. The State claims exigency, but demonstrated no urgency in collecting the clothing. The State claims plain view, but the officer was sent to Mr. Morgan's hospital room to collect the clothing and conducted a search to find it. This Court should affirm the Court of Appeals.

B. ISSUES

1. Where the police waited up to two hours before collecting Mr. Morgan's clothing after deciding to seize it, and presented no evidence it could not get a timely warrant or what evidence would have been lost if the police had sought a warrant, is the State precluded from relying on exigent circumstances to justify its warrantless seizure?

2. Where an officer was directed to seize Mr. Morgan's clothing, and conducted a search of shopping bags in order to find it, should the Court reject the State's claim the seizure was lawful under plain view?

C. STATEMENT OF FACTS

David Morgan's home caught fire and the fire department and police responded. CP 208. A police sergeant learned Mr. Morgan and his

ex-wife, Brenda Welch, had been transported to two different hospitals. CP 208. A paramedic told the sergeant both had smelled of gasoline when treated at the scene for their injuries. CP 208. The sergeant dispatched a crime scene technician to seize Ms. Welch's clothing and Officer Christopher Breault to seize Mr. Morgan's clothing. CP 208.

One to two hours later, the police seized Mr. Morgan's clothing in his hospital room without a warrant and the State subjected this clothing to a "blood splatter" analysis. 3/29/16 RP 71. Mr. Morgan moved to suppress this evidence before trial. RP 144.

The trial court considered the written narratives provided by the sergeant, the crime scene technician, and Officer Breault. CP 208, 314, 316; RP 148, 150. The sergeant stated he directed Officer Breault to the hospital to collect the clothing. RP 208. The crime scene technician stated that, at the sergeant's direction, he went first to see Ms. Welch at Harborview Medical Center in Seattle and then to Swedish Edmonds Hospital to assist Officer Breault in collecting Mr. Morgan's clothing. CP 314-15. Officer Breault stated he had gathered the clothing. CP 317. None of the officers explained why the seizure was conducted without a warrant.

The trial court indicated it would suppress the evidence based upon the undisputed facts presented in these reports. RP 150. In response, the State presented testimony from Officer Breault. RP 150. Officer Breault

testified he positioned himself inside Mr. Morgan's hospital room for one to two hours before he noticed Mr. Morgan's clothing, which had been placed in "several plastic shopping like bags" provided by the hospital and placed on a counter in the hospital room. RP 151, 154, 158, 159. Officer Breault had no knowledge about specific chemicals that might be on the clothing or the rate of dissipation of those chemicals. RP 161.

After discovering the clothing in the shopping bags, Officer Breault took no action. RP 159-60, 162. He did not recall who directed him to seize the clothing, but the crime scene technician arrived shortly after Officer Breault found the clothing and Officer Breault assisted the crime scene technician with packaging the clothing in special bags. RP 159, 157, 167. Officer Breault did not have training or experience in using these bags but was aware of their purpose, which he testified is to prevent cross-contamination and preserve evidence. RP 154, 156-57.

The trial court ruled orally the seizure was lawful because "there are special bags that have been designed and are available to put clothing and other items into so as to preserve that particular evidence." RP 182. The court entered no written findings. Mr. Morgan moved to reconsider, but the trial court denied the motion. RP 196.

The Court of Appeals reversed, finding the State failed to prove applying for a warrant would have resulted in a loss of evidence. Slip Op.

at 25. The Court of Appeals also rejected the State’s claim that the plain view exception applied because Officer Breault did not see the evidence through the bags or decide to seize the clothing. Slip Op. at 26.

D. ARGUMENT

1. The State did not prove exigent circumstances justified its warrantless seizure of Mr. Morgan’s clothing.

- a. Exigent circumstances justifies a warrantless search only where the officer is faced with a choice of “now or never.”

It is well established that a warrantless search is per se unreasonable under our state constitution. Const. art. I, § 7; *State v. Hendrickson*, 129 Wn.2d 61, 70, 917 P.2d 563 (1996). Exceptions to the warrant requirement have been “jealously and carefully drawn” and the burden is on the State to prove that an exception applies. *Hendrickson*, 129 Wn.2d at 70 (quoting *Arkansas v. Sanders*, 442 U.S. 753, 759, 99 S. Ct. 2586, 61 L. Ed. 2d 235 (1979)). The State must make this showing by clear and convincing evidence. *State v. Garvin*, 166 Wn.2d 242, 250, 207 P.3d 1266 (2009).

“Exigent circumstances” is one of the few carefully drawn exceptions to the warrant requirement. *State v. Tibbles*, 169 Wn.2d 364, 369, 236 P.3d 885 (2010). This “exception requires a compelling need for officer action and circumstances that make the time necessary to secure a warrant impractical.” *State v. Baird*, 187 Wn.2d 210, 221, 386 P.3d 239

(2016). Whether exigent circumstances justified a warrantless search is a fact specific inquiry that is not based merely on whether exigent circumstances existed but also whether the State has proven the totality of the circumstances required the officer to act without a warrant. *See id.*; *Tibbles*, 169 Wn.2d at 370; *Birchfield v. North Dakota*, __ U.S. __, 136 S. Ct. 2160, 2174, 195 L. Ed. 2d 560 (2016); *Missouri v. McNeely*, 569 U.S. 141, 151, 133 S. Ct. 1552, 185 L. Ed. 2d 696 (2013).

The fundamental concept behind the exigent circumstances exception is that the officer was faced with a choice of “now or never.” *Roaden v. Kentucky*, 413 U.S. 496, 505, 93 S. Ct. 2796, 37 L. Ed. 2d 757 (1973); *McNeely*, 569 U.S. at 153. The facts of the case must demonstrate “[n]ecessity, a societal need to search without a warrant.” *Tibbles*, 169 Wn.2d at 372-73 (quoting *State v. Patterson*, 112 Wn.2d 731, 734, 774 P.2d 10 (1989)). No amount of probable cause excuses the State from making this showing. *Hendrickson*, 129 Wn.2d at 71.

- b. The State’s claim that evidence would be lost to dissipation or cross-contamination is a fact specific inquiry that must be supported by the evidence.

As the United States Supreme Court held in *McNeely*, the natural and predictable dissipation of evidence does not present the same “now or never” situation as might occur, for example, where an officer is

concerned a suspect may quickly and easily dispose of evidence. 569 U.S. at 152.

In *McNeely*, an individual suspected of drunk driving refused to take a breath test and the officer transported him to a hospital and directed a lab technician to draw the individual's blood without a warrant. *Id.* at 145-46. The Court rejected the State's claim that such circumstances always satisfied the exigency exception, pointing out the delay involved in transporting the individual to the hospital and the relative efficiency with which warrant applications are now typically processed. *Id.* at 153-54. The Court also noted there "would be no plausible justification for an exception to the warrant requirement" where one officer was available to obtain a warrant while another officer transported the suspect. *Id.* at 154. With no evidence before it demonstrating the police faced an emergency that prevented them from obtaining a warrant, the Court affirmed the suppression of the evidence. *Id.* at 146, 165.

In *City of Seattle v. Pearson*, the Court of Appeals relied on *McNeely* to find exigent circumstances did not justify the warrantless draw of Ms. Pearson's blood. 192 Wn. App. 802, 816, 369 P.3d 194 (2016). Similar to *McNeely*, the officer arrested Ms. Pearson for suspicion of driving under the influence and, after she admitted to using marijuana, transported her to the hospital to have her blood drawn. *Id.* at 808-09.

At an evidentiary hearing, the City presented evidence about the rate of dissipation of THC in the bloodstream and the ability to obtain a warrant by email or telephone. *Id.* at 809. The Court of Appeals rejected the City's claim of exigent circumstances because the City failed to show a warrant could not have been obtained before the evidence dissipated. *Id.* at 814. It held the City failed to satisfy its heavy burden where it provided no evidence as to why the officers had neglected to seek a warrant during the approximately two and a half hours between the collision and blood draw. *Id.* at 814-15. The court also found that, like in the example posited in *McNeely*, there were several other officers available at the scene to seek a warrant while Ms. Pearson was transported to the hospital. *Id.* at 816.

In contrast, the Court of Appeals distinguished the facts presented in *Pearson* when upholding the refusal to suppress a warrantless blood draw in *State v. Inman*, 2 Wn. App. 2d 281, 293, 409 P.3d 1138 (2018). In *Inman*, the deputy conducted a warrantless blood draw before the suspect was transported by helicopter to a trauma center. *Id.* at 285. The officer testified a telephonic warrant was impractical because the medical evacuation limited his time with the suspect and his cellular coverage was unreliable in the area of the accident. *Id.* at 291-92. Given these facts, the court found the State proved that waiting to obtain a warrant would have permitted the evidence to be lost. *Id.* at 293.

- c. The Court of Appeals was correct to reject the State's claim of exigent circumstances because the officers exhibited no urgency in collecting Mr. Morgan's clothing and the State presented no testimony to support its claim of dissipation or destruction of the evidence.

The Court of Appeals rightly relied on *Pearson* and *McNeely* to hold no exigency excused the State's failure to obtain a warrant before seizing Mr. Morgan's clothing in his hospital room. Slip Op. at 22. The court held:

we see no reason to relieve the State of its burden to show that applying for a warrant in this case would have resulted in the loss of whatever evidentiary value was in the bagged clothing. There is simply nothing in the record of the CrR 3.6 hearing on this critical evidentiary issue.

Slip Op. at 22.

The Court of Appeals is correct. The undisputed evidence shows the sergeant directed Officer Breault to the hospital to seize Mr. Morgan's clothing. CP 208. Officer Breault testified he stayed in Mr. Morgan's hospital room for as much as two hours before realizing the clothing had been placed in shopping bags in the room. RP 159, 167. The crime scene technician explained he went first to Harborview Medical Center to collect Ms. Welch's clothing and then to Swedish Edmonds Hospital to assist Officer Breault with the seizure of Mr. Morgan's clothing. CP 317.

The officers' actions demonstrated no urgency. It took up to two hours for the crime scene technician to arrive at Mr. Morgan's hospital

room to collect the clothing, but during that time no officer – including the sergeant who directed the seizure – sought to obtain a warrant.

As the Court of Appeals found, the State also presented no evidence about the chemicals the officers suspected might be found on the clothing or the dissipation rate of the evidence it sought to preserve. Slip Op. at 23. Officer Breault testified the clothing needed to be repackaged in special bags to prevent “cross-contamination,” and the State has claimed this supports a finding the clothing needed to be immediately seized to prevent the unintentional destruction of the evidence by hospital staff or intentional destruction of the evidence by Mr. Morgan. RP 154; State Pet. at 13. As the Court of Appeals found, the State’s claim is unsupported by the record. Slip Op. at 23.

First, Officer Breault never expressed a concern about the hospital staff or Mr. Morgan destroying the evidence. He only testified about the possibility of chemicals on the clothing dissipating within an unknown window of time. RP 154. In addition, Officer Breault took no action once he discovered the clothing in the bags. RP 159-60, 162. He assisted in seizing the clothing only after the crime scene technician arrived. RP 160.

Finally, to the extent it is appropriate to consider the testimony presented by the State at the CrR 3.5 hearing, which was held immediately before the CrR 3.6 hearing, the evidence shows the crime scene technician

arrived while two detectives were interviewing Mr. Morgan. RP 75 (one detective stating the crime scene technician, “Officer Reorda,” arrived while he was there). One of these detectives contacted a homicide prosecutor, suggesting it would have been possible to secure a telephonic warrant, had any of the officers elected to do so. As the Court of Appeals found, this evidence showed “the means of seeking a telephonic warrant were readily available.” Slip Op. at 23.

None of the officers chose to seek a warrant despite having at least one to two hours to do so and evidencing no urgency in collecting the clothing. As the Court of Appeals held, the State failed to meet its burden to show that applying for a warrant would have resulted in the loss of the evidence it sought to preserve. Slip Op. 25. No exigency justified the warrantless seizure of Mr. Morgan’s clothing.

- 2. The seizure of Mr. Morgan’s clothing was not justified under the plain view exception.**
 - a. The trial court and Court of Appeals properly rejected the State’s claim that the warrantless seizure was justified by the plain view exception because the officer was sent to collect the clothing and conducted a search to find it.

At the conclusion of the evidentiary hearing the trial court rejected the State’s alternative argument that the “plain view” exception justified the warrantless seizure of Mr. Morgan’s clothing. RP 181. The Court of Appeals similarly held “[n]one of the authorities of which we are aware”

apply the plain view exception to the factual pattern presented here. Slip Op. at 26. The courts were correct to reject the State's claim that the plain view exception justified its warrantless seizure of Mr. Morgan's clothing, as the State's assertion is unsupported by the evidence.

“The requirements for plain view are (1) a prior justification for intrusion, (2) inadvertent discovery of incriminating evidence, and (3) immediate knowledge by the officer that he had evidence before him.” *State v. Kull*, 155 Wn.2d 80, 85, 118 P.3d 307 (2005) (citing *State v. Chrisman*, 94 Wn.2d 711, 715, 619 P.2d 971 (1980)). Here, no officer inadvertently came upon Mr. Morgan's clothing, determined it was incriminating, and made the decision to seize it.

Instead, the facts show the sergeant directed Officer Breault to seize the clothing as much as two hours before Officer Breault found it in Mr. Morgan's hospital room and that Officer Breault took no action until the crime scene technician arrived at the sergeant's direction to collect it. RP 159-60. How Officer Breault found Mr. Morgan's clothing, which had been placed in plastic shopping bags in the back counter of Mr. Morgan's hospital room, is unknown. RP 154. Officer Breault never claimed he could see through the shopping bags or that the bags were labeled as to their contents. Had either of these things been true, the burden was on the State to present this evidence at the hearing. *Garvin*, 166 Wn.2d at 250.

Officer Breault did not have lawful authority to search Mr. Morgan's belongings. Under article I, section 7, Mr. Morgan's clothing was protected from a warrantless search just as if he had been wearing it. *See State v. Parker*, 139 Wn.2d 486, 498-99, 987 P.2d 73 (1999) ("personal effects are protected from search to the same extent as the person to whom they belong" and "need not be worn or held to fall within the scope of protection"). Mr. Morgan did not consent to a search of the shopping bags and he had not been placed under arrest. *See State v. Jones*, 146 Wn.2d 328, 335-36, 45 P.3d 1062 (2002) ("a search incident to arrest is a well-recognized exception to the warrant requirement" but evidence suppressed where the State failed to show the purse searched by police was in the defendant's immediate control). Because Officer Breault lacked lawful authority to search the shopping bags, the State failed to prove it satisfied the first prong of the plain view exception. *Kull*, 155 Wn.2d at 88-89.

The State also did not prove Officer Breault came upon the evidence inadvertently. The sergeant stated he dispatched Officer Breault to Mr. Morgan's hospital room with the express purpose of collecting the clothing. CP 208. Officer Breault did not explain how he came upon the clothing, other than it took him one to two hours after arriving at the hospital to find the clothing in the shopping bags. RP 159. As this Court

found in *State v. Daugherty*, discovery of evidence during a warrantless exploratory search cannot be deemed “inadvertent.” 94 Wn.2d 263, 616 P.2d 649 (1980) (where officer deliberately took an alternate route on the defendant’s property to look for evidence, the subsequent discovery of evidence was not inadvertent). Here, Officer Breault conducted a search of Mr. Morgan’s belongings in Mr. Morgan’s hospital room. His discovery of the clothing was in no way unintentional or inadvertent.

Finally, as the Court of Appeals found, “the incriminating character of the evidence was not in plain view because neither blood nor other relevant crime information could be seen through the plastic bag.” Slip Op. at 27. In its petition, the State argues Officer Breault did not need to smell gasoline or see blood in order to identify the clothing as incriminating evidence. State Pet. at 11. However, this argument ignores the fact Officer Breault performed a warrantless search of the shopping bags to find the clothing. The only thing in Officer Breault’s “plain view” were shopping bags. The State offered no evidence showing Officer Breault identified incriminating evidence, including just the clothing itself, through these opaque shopping bags.

As both the trial court and the Court of Appeals concluded, the plain view exception does not apply where an officer was sent with the express purpose of collecting a particular piece of evidence, performed a

warrantless search to find it, and waited for further direction from his superiors to seize it. RP 181; Slip Op. at 27. The State may not rely on this exception to justify its warrantless search.

- b. This Court has long established that under article I, section 7, the plain view exception requires the officer's discovery of the evidence be "inadvertent," and this Court should reject the State's invitation to eliminate this requirement.

In its misguided effort to apply the plain view doctrine to the facts of this case, the State argues this Court should eliminate the requirement the evidence be discovered "inadvertently." State Pet. at 5. It relies upon a Fourth Amendment analysis for this argument. State Pet. at 5; U.S. Const. amend. IV.

In *Coolidge v. New Hampshire*, the United States Supreme Court explained "plain view alone is never enough to justify the warrantless seizure of evidence," and articulated specific requirements essential to this exception to the warrant requirement. 403 U.S. 443, 466-68, 91 S. Ct. 2022, 29 L. Ed. 2d 564 (1971). The Court held the initial intrusion must be lawful and the police must have inadvertently come upon the incriminating evidence or contraband. *Id.* at 466. The Court reasoned these requirements would distinguish a plain view seizure from those circumstances in which the police anticipated the discovery of the evidence, knew the location of the evidence, and intended to seize it upon

arriving at the location. *Id.* at 470. In such a situation, the Court held, the Fourth Amendment requires police obtain a warrant. *Id.*

In *Horton v. California*, the Court departed from *Coolidge* and held that although inadvertence was a characteristic of most lawful plain view seizures, it was not a necessary condition. 496 U.S. 128, 130, 110 S. Ct. 2301, 110 L. Ed. 2d 112 (1990). The specific facts of *Horton* were critical to the Court's analysis. In *Horton*, the police attempted to obtain a warrant to search the defendant's home for weapons and proceeds of a robbery but the magistrate found only a search for proceeds was justified by probable cause. *Id.* at 131. While staying within the confines of the warrant, the police searched the home and seized multiple weapons in plain view but found no proceeds of the robbery. *Id.*

The Court determined the plain view exception justified the warrantless seizure of the guns despite the fact the officers believed the weapons could be found in the defendant's home and hoped to seize them. *Id.* at 142. The Court found the exception applied because the officers had not strayed from the authorization provided by the warrant and the "incriminating character" of the weapons was "immediately apparent" to the officers during the search of the home. *Id.* Given these circumstances, the Court held plain view could justify a warrantless search without a finding the discovery of the evidence had been inadvertent. *Id.*

The Court's conclusion in *Horton* has limited relevance here, for two reasons. First, the officers in *Horton* were upfront about what they hoped to find in the home, obtained a warrant, and stayed within the authority granted by the warrant. While the Court determined a finding of "inadvertent" discovery was not required given the circumstances, the fact remains the officers had come upon incriminating evidence in plain view while lawfully executing a warrant.

Second, as this Court has long established, article I, section 7, provides greater protection than the Fourth Amendment. *State v. Hatchie*, 161 Wn.2d 390, 396, 166 P.3d 698 (2007) (citing *State v. McKinney*, 148 Wn.2d 20, 29, 60 P.3d 46 (2002); *State v. Myrick*, 102 Wn.2d 506, 510, 688 P.2d 151 (1984)); *see also Parker*, 139 Wn.2d at 493 ("It is by now axiomatic that article I, section 7 provides greater protection to an individual's right of privacy than that guaranteed by the Fourth Amendment."). Where a Fourth Amendment analysis hinges on reasonableness, article I, section 7 turns on whether a seizure was permitted by "authority of law," or a warrant. *Id.* at 397. In the absence of a warrant, the State must prove a carefully drawn and jealously guarded exception to the warrant requirement applies. *State v. Ortega*, 177 Wn.2d 116, 122, 297 P.3d 57 (2013).

Prior to the articulation of plain view factors in *Coolidge*, this Court recognized the exception in circumstances in which the officer inadvertently came upon the incriminating evidence. *See State v. La Pierre*, 71 Wn.2d 385, 386-87, 428 P.2d 579 (1967) (seizure of stolen items lawful under the plain view exception where the police were called to the store for a report of shoplifting and the items were sitting in a shopping cart upon their arrival); *State v. Kingsley*, 75 Wn.2d 552, 554, 452 P.2d 545 (1969) (police lawfully seized a container of marijuana in plain view where they responded to a noise complaint and the marijuana was “literally... thrown at their feet”). In the context of inventory searches, this Court also explained the importance of preventing the police from using exceptions as a pretext to circumvent the warrant requirement. *See, e.g. State v. Montague*, 73 Wn.2d 381, 385, 438 P.2d 571 (1968) (“Neither would this court have any hesitancy in suppressing evidence of crime found during the taking of the inventory, if we found that either the arrest or the impoundment of the vehicle was resorted to as a device and pretext for making a general exploratory search of the car without a search warrant.”). Thus, the inadvertence requirement in our plain view doctrine is not solely based on *Coolidge* or tethered directly to the Fourth Amendment.

In addition, following *Horton*, this Court has continued to apply the “inadvertence” requirement when evaluating the plain view exception. See *Kull*, 155 Wn.2d at 85 (citing *Chrisman*, 94 Wn.2d at 715); *State v. Reep*, 161 Wn.2d 808, 816, 167 P.3d 1156 (2007) (noting discovery of evidence must be inadvertent while recognizing no such requirement exists under the Fourth Amendment); *State v. Myers*, 117 Wn.2d 332, 346, 815 P.2d 761 (1991) (“requirement that a discovery be inadvertent” remains mandatory element of the plain view exception). Because this requirement is not based solely on the Fourth Amendment, this Court should not take the drastic step of overturning its established precedent. See *State v. Otton*, 185 Wn.2d 673, 678, 374 P.3d 1108 (2016) (such precedent may be rejected only where “an established rule is incorrect and harmful”).

Despite this Court’s unwavering adherence to the plain view requirements as set forth in *Kull*, the State cites *State v. O’Neill*, 148 Wn.2d 564, 582, 62 P.3d 489 (2003), to argue this area of the law is unsettled. State Pet. at 6. While this Court omitted the “inadvertence” requirement in *O’Neill*, it also explained it was relying on the federal standard articulated in *Horton* because the State had not argued for a different analysis under the state constitution. *O’Neill*, 148 Wn.2d at 582. Had the Court applied the state constitutional standard, the officer’s

discovery of the evidence was indisputably inadvertent, as he observed a “cook spoon” on the floorboard next to the driver’s seat after ordering the defendant out of the car for other reasons. *O’Neill*, 148 Wn.2d at 582. An inadvertence analysis was unnecessary because the Court’s decision did not rest on whether the officer came upon the evidence inadvertently.

There is no valid reason for this Court to depart from the well-established requirements it set forth in *Kull*, particularly under the facts presented here. Officer Breault was directed to the hospital to locate and seize Mr. Morgan’s clothing and was required to search through Mr. Morgan’s belongings in order to locate them. He then did nothing until another officer came to collect the clothing. The plain view exception does not apply under the facts of this case.

Because no exception to the warrant requirement justifies the warrantless seizure of Mr. Morgan’s clothing, all evidence obtained from the clothing should be suppressed. *State v. Ladson*, 138 Wn.2d 343, 359, 979 P.2d 833 (1999) (discussing “fruit of the poisonous tree” doctrine).

3. As the Court of Appeals held, reversal is required.

The State did not argue the trial court’s refusal to suppress the evidence was harmless before the Court of Appeals. *See Slip Op.* at 25. It may not do so now. *State v. Ibarra-Cisneros*, 172 Wn.2d 880, 884, 263

P.3d 591 (2011) (this Court “will not consider arguments that were waived below”).

Further, as the Court of Appeals held, the State could not argue the evidence was harmless based upon this record. Slip Op. at 25. There were no witnesses to the crime and the bloodstain pattern analysis performed on Mr. Morgan’s clothing was the only evidence suggesting Mr. Morgan was in close proximity to Ms. Welch at the time she suffered her injuries. Slip Op. at 28. The use of the unlawfully seized evidence against Mr. Morgan requires reversal.

E. CONCLUSION

The warrantless seizure of Mr. Morgan’s clothing was not justified by exigent circumstances or plain view. This Court should affirm the Court of Appeals and reverse Mr. Morgan’s conviction.

DATED this 3rd day of December, 2018.

Respectfully submitted,



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Washington Appellate Project (91052)
Attorneys for Respondent

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Petitioner,

DAVID MORGAN,

Respondent.

NO. 96017-8

DECLARATION OF DOCUMENT FILING AND SERVICE

I, MARIA ARRANZA RILEY, STATE THAT ON THE 3RD DAY OF DECEMBER, 2018, I CAUSED THE ORIGINAL **SUPPLEMENTAL BRIEF OF RESPONDENT** TO BE FILED IN THE WASHINGTON STATE SUPREME COURT AND A TRUE COPY OF THE SAME TO BE SERVED ON THE FOLLOWING IN THE MANNER INDICATED BELOW:

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