

FILED
SUPREME COURT
STATE OF WASHINGTON
8/30/2018 1:58 PM
BY SUSAN L. CARLSON
CLERK

No. 96183-2

Grant County Cause No. 18-1-00030-3

SUPREME COURT
OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Petitioner,

v.

JOEL VILLELA,

Respondent.

AMENDED MOTION FOR DISCRETIONARY REVIEW

GARTH DANO
PROSECUTING ATTORNEY

Kevin J. McCrae – WSBA #43087
Deputy Prosecuting Attorney
Attorneys for Petitioner

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A. IDENTITY OF PETITIONER

The State of Washington, Petitioner and Plaintiff below, asks this court to accept review of the decision designated in Part B of this motion.

B. DECISION

The decision suppressing evidence based on the finding that RCW 46.55.360 (Hailey's Law) is unconstitutional. A copy of the decision and trial court memorandum is attached as Exhibit A.

C. ISSUE PRESENTED FOR REVIEW

Is RCW 46.55.360 (Hailey's Law) facially unconstitutional?

D. STATEMENT OF THE CASE

Facts are taken from the police report filed by Sgt. Paul Snyder of the Quincy Police Department. Ex. B. As the Lower Court's decision involved a facial attack on the constitutional validity of a statute, the facts are not disputed for these purposes.

About 2 am Sgt. Snyder observed a Jeep Grand Cherokee speeding in Quincy, Washington. As he pulled over the vehicle he observed a case of beer in the back. He contacted the driver and smelled a strong odor of alcohol coming from the vehicle. There were two other passengers in the Jeep. Sgt. Snyder ordered the driver, Joel Villela, out of the vehicle to investigate a possible DUI. Mr. Villela was less than cooperative, refusing

to get out of the vehicle until he was asked several times. After Mr. Villela was removed from the vehicle Sgt. Snyder could still smell a significant odor of alcohol from Mr. Villela and believed he was impaired. Sgt. Snyder arrested Mr. Villela for suspicion of DUI. Search incident to arrest of Mr. Villela revealed 10 grams of a white powder Sgt. Snyder believed to be cocaine.

Pursuant to the mandatory impound law, RCW 46.55.360 (Hailey's Law), Sgt. Snyder impounded the vehicle. Sgt. Snyder did not consider any alternatives to impoundment because it was mandatory under the statute. During the inventory search of the vehicle, in the center console, Sgt. Snyder found three baggies, several pieces of baggies, a black digital scale with white powder, a new scale, a black cloth with white powder and \$340.00 in cash.

The State charged Mr. Villela with possession of cocaine with intent to deliver and DUI. Mr. Villela moved to suppress the evidence found in the car and Sgt. Snyder's audio recording of the incident.¹ The trial court granted the suppression motion for the items found in Mr. Villela's Jeep, adopting a previous ruling from another judge in another

¹ The suppression of the audio recording is not at issue here.

case and holding the mandatory DUI impound law is facially unconstitutional. Ex. A.

E. ARGUMENT WHY REVIEW SHOULD BE ACCEPTED

Discretionary review of this case is appropriate under RAP 2.3(b)(4). Both parties have stipulated, and the Superior Court has certified, that this case involves a controlling question of law as to which there is substantial ground for a difference of opinion and immediate review of the order may materially advance the ultimate termination of the litigation. Exs. B, C.

In this case Mr. Villela is charged with possession with intent to deliver cocaine and DUI. The Court's suppression order means the State is no longer able to proceed with the possession with intent to deliver charge, but can still proceed with a simple possession and DUI charge. Thus the practical effect is not to terminate the case, and the State does not have an appeal as of right under RAP 2.2(b)(2). However the possession with intent charge is by far the most serious charge (drug seriousness level II, RCW 9.94A.517). Given the uncertainty surrounding the suppression issue a clear ruling will benefit both sides and allow for a possible resolution of the case short of trial. If the State is required to maintain its right to appeal post-conviction it will almost guarantee a trial and a more costly resolution of the case.

There is also substantial grounds for a difference of opinion on the merits. The party seeking to declare a statute unconstitutional has the burden to do so beyond a reasonable doubt. *Sch. Districts' All. for Adequate Funding of Special Educ. v. State*, 170 Wn.2d 599, 605, 244 P.3d 1, 4 (2010). The burden exists because the legislature is a co-equal branch of government, also sworn to uphold the Constitution. *Id.* Also, the legislature speaks for the people, and so the courts are hesitant to strike a duly enacted statute unless convinced, after a searching legal analysis, that the statute violates the Constitution. *Id.* The Courts assume the legislature considered the constitutionality of its enactments and afford great deference to its judgment. *Id.*

Wash. Art. 1 §7 states “No person shall be disturbed in his private affairs, or his home invaded, without authority of law.” Hailey’s Law provides authority of law. The trial court held that the law was “calculated to mandate a search of every car driven by one arrested for driving under the influence.” This holding is unsupported by evidence in the legislative record or the record of this case. While the search of DUI arrestee’s vehicle is certainly a foreseeable side effect of Hailey’s Law that does not mean it was an animating motive behind it, and the court should not impute improper motive to the legislature without any evidence to back it up. The legislature declared its intent for the law to be promoting public

safety by removing the ability of impaired drivers to access their vehicles. Absent significant evidence to the contrary, the legislature should be taken at their word as a co-equal branch of government. Thus Hailey's Law should be analyzed for what it is, an attempt by the legislature to improve the public safety. Nor does the fact that the law may not perfectly achieve its goals make it illusory. The Court noted that another registered owner of the vehicle may potentially pick up the vehicle at the impound lot before the 12 hours expire, and stated this makes the protections of the law illusory. First, even if a co-owner of the vehicle does pick it up, according to the tow company operator who testified at the CrR 3.6 hearing it would still take at least an hour and a half to pick up and process the vehicle. The legislature had to balance two competing concerns. The safety needed to impound the vehicle and prevent the intoxicated person from driving it versus the property rights of innocent registered co-owners. *See Jackson v. City of Chicago*, 975 N.E.2d 153, 163 (Ill. App. Ct. 2012) (discussing constitutionality of seizure and forfeiture statutes without innocent owner defense). The compromise the legislature came up with may not be perfect from the safety of the public standpoint, but it does not render the promise of the statute illusory. The legislature has made this compromise to protect property rights of innocent parties in other areas as well. The purpose of the civil seizure laws is to deprive criminals of the means and

profits of their criminal activities. Yet the legislature allows innocent owners of the property that a criminal might use to keep their property. RCW 69.50.505. No doubt this reduces the effectiveness of the civil seizure laws. That does not make them illusory or mean the legislature had an ulterior motive in passing them.

Washington is not the only jurisdiction to have a Hailey's Law. New Jersey has John's Law, N.J.S. 39:4-50.23, which is much the same as Hailey's Law. Utah has U.C. 41-6a-527. Chicago also has a mandatory impound law that is significantly broader than Hailey's Law. Chicago Muni Code 7-24-226. The legislature has determined that the risk of an intoxicated person returning to vehicle imposes an unacceptable risk to the public, and directs that officers do something about it. In addition this case presents another valid reason for Hailey's Law. At least one of Mr. Villela's friends acknowledged to Sgt. Snyder that he was intoxicated. Hailey's Law prevents drunken friends of the defendant from obtaining control of the vehicle after the officer leaves, at least for enough time to start to sober up.

The legislature declared that it was reasonable to impound vehicles where there was probable cause to conclude the person was driving impaired as a public safety message. One drunk who returns to their vehicle can cause millions of dollars in damages to the State and

individuals and endless pain to the citizens of this State. The Court has no evidence on which to base its conclusions about the legislature's motivation. The legislature has decided that when there is probable cause to conclude that someone is driving impaired, the necessity exists for a limited intrusion on the person's property rights in order to protect public safety.

F. CONCLUSION

Interlocutory review is called for under RAP 2.3(b)(4), as there is reasonable grounds for disagreement and a speedy resolution of the issue will advance the conclusion of the case.

Dated: August 29th, 2018.

Respectfully submitted:

GARTH DANO
Prosecuting Attorney

By: 
Kevin J. McCrae, WSBA # 43087
Deputy Prosecuting Attorney
kmccrae@grantcountywa.gov

A

FILED

JUL 24 2018

**KIMBERLY A. ALLEN
GRANT COUNTY CLERK**

SUPERIOR COURT FOR THE STATE OF WASHINGTON COUNTY OF GRANT

STATE OF WASHINGTON,)	Case No.: 18-1-00030-3
)	
Plaintiff,)	ORDER SUPPRESSING EVIDENCE
vs.)	
)	
JOEL VILLELA,)	
)	
Defendant.)	

ORDER

This matter came on to be heard on the 19TH day of June, 2018. The parties stipulated the following matters to the Court:

1. The parties stipulate that the audio recording made during Mr. Villela's arrest is not admissible by the State due to failure of the State to comply with the mandates of RCW 9.73.090.
2. The parties stipulate that the impound of Mr. Villela's vehicle was solely because of the mandate of RCW 46.55.360 requiring that all vehicles driven by a person under arrest for driving under the influence have their vehicles

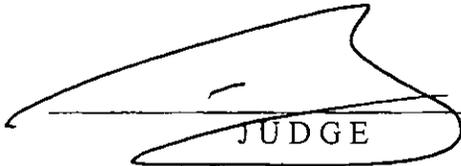
impounded for a mandatory twelve hours.

Upon consideration of the stipulations of the parties, together with the testimony of Stacie Greenwalt, owner of DJ's Auto Wrecking concerning the costs and incidents of impoundment, the Court determines that the sole question to be determined is the constitutionality of RCW 46.55.360 insofar as mandatory impoundment.

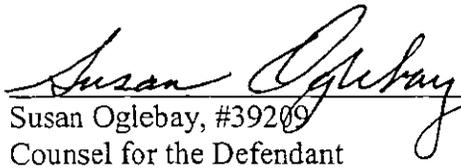
In this regard, the Court adopts the findings and conclusions set forth in the letter opinion of the Hon. John D. Knodell; which opinion is attached hereto and incorporated herein and therefore sustains the motion to suppress all items found in Mr. Villela's vehicle as a result of the impound search.

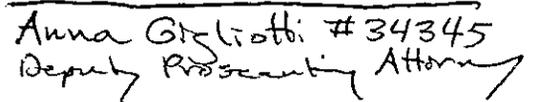
The parties stipulate that there is good cause to review under RAP 2.4.

ENTER this the 24th day of July, 2018.


JUDGE

REQUESTED:


Susan Oglebay, #39209
Counsel for the Defendant


Anna Gigliotti #34345
Deputy Prosecuting Attorney

ORDER-2

The Superior Court of Washington
In and for Grant County

DAVID G. ESTUDILLO, Judge, Dept. 1
JOHN D. KNODELL, Judge, Dept. 2
JOHN M. ANTOSZ, Judge, Dept. 3
HARRY E. RIES, Court Commissioner

35 C Street NW
P.O. Box 37
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MINDI FINKE, Court Administrator
CRYSTAL BURNS, Deputy Court Administrator
LYNETTE HENSON, Jury Administrator
TOM BARTUNEK, Official Reporter

December 4, 2015

Alan White
Chief Deputy Prosecutor
Grant County Prosecutors Office
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Ephrata, WA 98823

Robert Kentner
Attorney at Law
P.O. Box 14
Seattle, WA 98111

RE: State v. Castro
Grant County Cause No.: 15-1-00065-1

Dear Counsel:

The Defendant in the above-entitled matter, Mr. Enrique Castro, moves this court to suppress evidence of a pistol seized from a car he was driving. Mr. Castro contends the investigating officer unconstitutionally impounded the car and this impoundment led to the seizure of the pistol.

The relevant facts are largely undisputed. On January 29, 2015, at about nine o'clock p.m., Officer Donald Huffman of the Moses Lake Police Department was on patrol within the city limits of Moses Lake. He observed a vehicle registered to Daniela Pimentel pulling out of a driveway. Night had fallen and only one of the car's headlights was illuminated. Officer Huffman stopped the car.

The driver of the vehicle immediately pulled over and parked the car safely off the side of the road. The officer identified Mr. Castro as the driver. Shortly after this, Mr. Castro's grandmother arrived and took charge of a young girl in the car with Mr. Castro.

Mr. Castro displayed signs of intoxication. He did not have a valid driver's license and there was an outstanding failure to appear warrant for his arrest. By this time, there were three officers present at the scene. Officer Huffman formally placed Mr. Castro under arrest, searched him and found a baggie of marijuana in his pocket.

FILED

DEC 04 2015

KIMBERLY A. ALLEN
GRANT COUNTY CLERK

Because Officer Huffman was arresting Mr. Castro for, among other things, driving under the influence, RCW 46.55.360(1)(a) required him to impound the car. For this reason, Officer Huffman did so without considering whether the situation afforded any reasonable alternatives. For the same reason, Officer Huffman did not honor the request of Mr. Castro's grandmother to take the vehicle.

During an inventory of the car at the scene, Officer Huffman observed a firearm in the car's glovebox. This prompted him to check Mr. Castro's criminal history. Officer Huffman discovered the Defendant had been convicted of extortion and burglary. The officer then obtained and executed a search warrant for the car and thereby seized the pistol. Mr. Castro now complains that the impoundment violated his constitutional right to be free from unreasonable searches and seizures.

The impoundment of a vehicle is a seizure. State v. Reynoso, 41 Wash. App. 113, 116, 702 P.2d 1222 (1990). A warrantless impoundment, such as the one here, is per se unreasonable. State v. Houser, 95 Wash. 2d 143, 149, 622 P.2d 1218 (1980). The burden is upon the State to demonstrate that such an impoundment is justified. State v. Simpson, 95 Wash. 2d 170, 188, 622 P.2d 1199 (1980).

Under the Washington Constitution, article 1, section 7, officers under restricted circumstances may impound a vehicle after arresting the vehicle's driver. See State v. Hill, 68 Wash. App. 300, 842 P.2d 996 (1993). But, it is unreasonable to impound a citizen's vehicle where a reasonable alternative to impound exists. State v. Houser, 95 Wash. 2d 143, 622 P.2d 1218 (1980). While this does not mean an officer is required to exhaust all possible alternatives, the State must demonstrate the officer "at least thought about alternatives; attempted, if feasible to get from the driver someone in the vicinity who could move the vehicle; and then reasonably concluded from his deliberation that impoundment was in order. State v. Hill, supra, 68 Wash. App. at 306; State v. Hardman, 17 Wash. App. 910, 914, 567 P.2d 238 (1977), review denied, 89 Wash. 2d 1020 (1978).

Officer Huffman did not undergo this constitutionally mandated deliberation process because he understood that RCW 46.55.360 required him to impound Mr. Castro's car. That statute provides as follows:

(1)(a) When a driver of a vehicle is arrested for a violation of RCW 46.61.502 or 46.61.504, the vehicle is subject to summary impoundment and except for a commercial vehicle or farm transport vehicle under subsection (3)(c) of this section, the vehicle must be impounded. With the exception of the twelve-hour hold mandated under this section, the procedures for notice, redemption, storage, auction, and sale shall remain the same as for other impounded vehicles under this chapter.

When it enacted RCW 46.55.360, the legislature made the following findings:

- (a) Despite every effort, the problem of driving or controlling a vehicle while under the influence of alcohol or drugs remains a great threat to the lives and safety of citizens. Over five hundred people are killed by traffic accidents in Washington each year and impaired vehicle drivers account for almost forty-five percent, or over two hundred deaths per year. That is, impairment is the leading cause of traffic deaths in this state;
- (b) Over thirty-nine thousand people are arrested each year in Washington for driving or controlling a vehicle while under the influence of alcohol or drugs. Persons arrested for driving or controlling a vehicle while under the influence of alcohol or drugs may still be impaired after they are cited and released and could return to drive or control a vehicle. In the vehicle was impounded, there is nothing to stop the impaired person from going to the tow truck operator's storage facility and redeeming the vehicle while still impaired;
- (c) More can be done to deter those arrested for driving or controlling a vehicle while under the influence of alcohol or drugs. Approximately one-third of those arrested for operating a vehicle under the influence are repeat offenders. Vehicle impoundment effectively increases deterrence and prevents an impaired driver from accessing the vehicle for a specified time. In addition, the vehicle impoundment provides an appropriate measure of accountability for registered owners who allow impaired drivers to drive or control their vehicles, but it also allows the registered owners to redeem their vehicles once impounded. Any inconvenience on a registered owner is outweighed by the need to protect the public;
- (d) In order to protect public safety and to enforce the state's laws, it is reasonable and necessary to mandatorily impound the vehicle operated by a person who has been arrested for driving or controlling a vehicle while under the influence of alcohol or drugs.

The State argues that because the legislature has made this finding, the officer impounding a vehicle driven by one suspected of drunk driving need not explore reasonable alternatives to impoundment. In this case, however, it probably wasn't necessary to impound the car to keep Mr. Castro from getting it back before the passage of twelve hours. Mr. Castro was arrested not only on suspicion of driving under the influence, but also on a warrant for failing to appear on a felony matter which, in all probability, insured that he would not have been released and would not have been able to reclaim the car for close to twenty four hours later. A policy which requires towing any time the vehicle's driver is arrested without regard to such unique circumstances, which may make impoundment necessary, is contrary to the caretaking function which is the rationale for towing here. See United States v. Duguay, 93 F.3d 346 (7th Cir. 1996).

Further, the language of the statute on its face is calculated to mandate a search of every car driven by one arrested for driving under the influence whether or not it is necessary to protect the public from drunk drivers.

Although the stated purpose of the statute is to prevent arrested drunk drivers from reacquiring their vehicles within twelve hours, it provides as follows:

When a driver of a vehicle is arrested for a violation of RCW 46.61.502 or 46.61.504 and the driver is not a registered owner of the vehicle, the impounded vehicle may be redeemed by a registered owner or legal owner, who is not the driver of the vehicle, after the impounded vehicle arrives at the registered tow truck operator's storage facility as noted in the registered tow truck operator's master log.

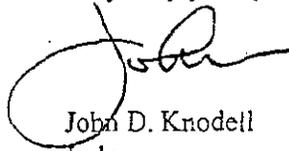
This provision guarantees that all vehicles, even those the arrested driver is highly unlikely to reacquire, will be inventoried, or searched before return since the arresting officer must presumably inventory a vehicle before it is taken to the tow truck operator's storage facility. Further, the protections of the statute are largely illusory, since nothing in it prevents a third party to whom the vehicle is returned from returning it, after impoundment, to the arrestee. In short, the statute forbids arresting officers to undergo the very individualized weighing process mandated by the Washington Constitution before impounding a car driven by one arrested for driving under the influence.

But while a state may impose more restrictive standards than the constitution requires, it may not, as the Washington legislature did when it enacted RCW 46.55.360, expand the scope of police authority to seize and seize under the constitution. See Nathanson v. United States, 290 U.S. 41, 76 L. E. 159, 54 S.Ct. 11 (1933). That statute, therefore, is unconstitutional.

It is impossible to determine now whether Officer Huffman, had he undergone the constitutionally required deliberation process, would have decided to impound the car, but this court need not speculate on this question. Because Officer Huffman did not deliberate as the constitution required, his impoundment of Mr. Castro's car was illegal and all evidence he obtained from that point onward is suppressed.

Mr. Castro also moves to suppress all evidence resulting from Officer Huffman's traffic stop of Mr. Castro's vehicle. The court agrees that the stop was lawful for the reasons the State has offered. The defense motion is granted to the extent consistent with this opinion and otherwise denied. Counsel should present appropriate findings, conclusions and order.

Very truly yours,



John D. Knodell
Judge

JDK:cmb

B

INFRACTION

PARKING TRAFFIC NON-TRAFFIC LEA: **WA0130300** COURT ORI #: **WA013013J** INFRACTION #: **8Z0149146** REPORT #: **18QU0102**

IN THE DISTRICT MUNICIPAL COURT OF **GRANT COUNTY DISTRICT COURT**
 STATE OF WASHINGTON COUNTY OF _____ CITY/TOWN OF _____, PLAINTIFF VS. NAMED DEFENDANT

THE UNDERSIGNED CERTIFIES AND SAYS THAT IN THE STATE OF WASHINGTON

DRIVER'S LICENSE NO. (SCANNED) **VILLEJA0870D** STATE: **WA** EXPIRES **09-04-20** PHOTO I.D. MATCHED YES NO NAME: LAST **VILLELA** FIRST **JOEL** MIDDLE **ALEJANDRO** SFX _____ CDL/CLP YES NO
 ADDRESS **507 L ST SW** IF NEW ADDRESS PASSENGER CITY **QUINCY** STATE **WA** ZIP CODE **988481563**

EMPLOYER _____ EMPLOYER LOCATION _____
 DATE OF BIRTH **09-04-92** RACE **H** SEX **M** HEIGHT **5'1"** WEIGHT **175** EYES **GRN** HAIR **BLK** RESIDENTIAL PHONE NO. _____ CELL/PAGER PHONE NO. _____ WORK PHONE NO. _____
 VIOLATION DATE ON OR ABOUT **01/13/2018 01:58** INTERPRETER NEEDED AT LOCATION **F ST SW** M.P. BLOCK # **100** CITY/COUNTY OF **QUINCY/GRANT**

DID OPERATE/PARK THE FOLLOWING VEHICLE ON A PUBLIC HIGHWAY/PROPERTY AND

VEH LIC NO **AXB7054** STATE **WA** EXPIRES **10-24-18** VEH YR **2008** MAKE **JEEP (JEEP)** MODEL **GRAND CHEROKEE** STYLE **WAGON 4 DOOR** COLOR **SILVER/**
 TR #1 LIC NO _____ STATE _____ EXPIRES _____ TR YR _____ TR #2 LIC NO _____ STATE _____ EXPIRES _____ TR YR _____

OWNER/COMPANY IF OTHER THAN DRIVER _____ ADDRESS _____ CITY _____ STATE _____ ZIP CODE _____

ACCIDENT NO **NO** COMMERCIAL VEHICLE YES NO 16+ PASS YES NO HAZMAT YES NO EXEMPT VEHICLE FIRE LEA

DID THEN AND THERE COMMIT EACH OF THE FOLLOWING OFFENSES

VEH SPEED **42** IN A **35** ZONE SMD PACE AIRCRAFT
 1. VIOLATION/STATUTE CODE **46.61.400** **SPEEDING 7 MPH OVER LIMIT (40 OR UN** PENALTY \$ **136.00**
 2. VIOLATION/STATUTE CODE **46.30.020** **OP MOT VEH W/OUT INSURANCE** PENALTY \$ **550.00**
 3. VIOLATION/STATUTE CODE _____ PENALTY \$ _____
 4. VIOLATION/STATUTE CODE _____ PENALTY \$ _____
 5. VIOLATION/STATUTE CODE _____ PENALTY \$ _____
 TOTAL PENALTY \$ **686.00**

RELATED # _____ DATE ISSUED **01-13-18**

TICKET SERVED ON VIOLATOR
 TICKET SENT TO COURT FOR MAILING
 TICKET REFERRED TO PROSECUTOR
 I CERTIFY UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON THAT I HAVE ISSUED THIS ON THE DATE AND AT THE LOCATION ABOVE, AND I HAVE PROBABLE CAUSE TO BELIEVE THE ABOVE DESCRIBED PERSON/VEHICLE COMMITTED THE ABOVE OFFENSE(S), AND I AM ENTERING MY AUTHORIZED USER ID AND PASSWORD TO AUTHENTICATE IT.
 OFFICER **P. SNYDER** # **1004**
 OFFICER _____ # _____

RECEIVED
JAN 23 2018
GRANT COUNTY
PROSECUTING ATTORNEY

18-01-048447

INFRACTION ABSTRACT OF JUDGMENT	INF #	RESPONSE	DISPOSITION	PENALTY	SUSPENDED	SUB-TOTAL	FINDING/JUDGMENT DATE
	1	C NC	C NC D P DF	\$	S	\$	ABSTRACT MLD TO OLYMPIA
	2	C NC	C NC D P DF	\$	S	\$	
	3	C NC	C NC D P DF	\$	S	\$	
	4	C NC	C NC D P DF	\$	S	\$	TOTAL COSTS
5	C NC	C NC D P DF	\$	S	\$	\$	

INFRACTION # 8Z0149146 QPD IT VILLELA, JOEL A 090492

On 01-13-18 at approximately 0158 hours, I (Sgt Snyder) was traveling east bound on F ST SW, when my radar picked up the defendant coming at me emitting a high audio signal. The display showed the vehicle speeding up from 35 mph to 42 mph in a 35-mph zone. I locked the radar. The defendant was the only vehicle (ABX7054, 2008 Jeep Grand) on the road and the unit was checked before and after the stop.

I have received training on the proper operation of this SMD and the visual estimation of speed from the Criminal Justice Training Commission, and I was operating the SMD in accordance with this training when the above reading was taken. The SMD that I used to obtain the defendant's speed has been certified by a factory-trained technician and found to be in proper working order. In addition, on this day the above mentioned speed was obtained on the defendant, I personally performed an operational check of the SMD's accuracy. I checked the (Serial # PYT380000634) SMD (speed measuring device) by use of an internal test switch and externally by the use of the assigned tuning fork(s) (Serial #22254 , 35MPH ; Serial #38153 , 65 MPH) at the beginning and end of my shift on the date listed on the notice of infraction. This full, operational check evaluated the accuracy of both the rear and front antennas in both stationary and moving mode, and I found the SMD to be in proper working order at the beginning and end of my shift on the date listed on the notice of infraction.

The vehicle turned south on 3rd AVE SW and followed. I activated my light at approximately H ST SW. The vehicle started to pull over and then continued and then stopped just passed I ST SW. As I approached the vehicle, I could see a

...NARRATIVE CONTINUES ON NEXT PAGE...

TRAFFIC		WEATHER		STREET		LIGHT	
WITNESS NAME (LAST, FIRST, M.I.)		PHONE		WITNESS NAME (LAST, FIRST, M.I.)		PHONE	
ADDRESS	CITY	STATE	ZIP	ADDRESS	CITY	STATE	ZIP
WITNESS NAME (LAST, FIRST, M.I.)		PHONE		WITNESS NAME (LAST, FIRST, M.I.)		PHONE	
ADDRESS	CITY	STATE	ZIP	ADDRESS	CITY	STATE	ZIP
WITNESS NAME (LAST, FIRST, M.I.)		PHONE		WITNESS NAME (LAST, FIRST, M.I.)		PHONE	
ADDRESS	CITY	STATE	ZIP	ADDRESS	CITY	STATE	ZIP
WITNESS NAME (LAST, FIRST, M.I.)		PHONE		WITNESS NAME (LAST, FIRST, M.I.)		PHONE	
ADDRESS	CITY	STATE	ZIP	ADDRESS	CITY	STATE	ZIP

INFRACTION # 8Z0149146 CPD IT
VILLELA, JOEL A 090492

case of Corona Beer in the back of the Jeep.

I contacted the driver, who was later identified as VILLELA, JOEL A (DOB: 09-04-92). I advised VILLELA the reason for the stop and that we were being recorded. I later learned my external mic failed to turn on, however the in-car was working. VILLELA handed me his driver's license, registration, and a bill for insurance dated in 10/2016. I asked VILLELA if there was a reason he was going so fast. VILLELA did not answer.

As I stood at the window of the vehicle, I could smell a strong odor of alcohol coming inside the vehicle. I asked VILLELA to step out of the vehicle. VILLELA said he knows his rights and he does not have to. I told VILLELA to step out of the vehicle several more times. I told VILLELA I could smell alcohol. VILLELA's speech was slurred and his eyes were bloodshot. The front passenger, LUIS VILLALOBOS said it was probably him, because he had been drinking and that VILLELA came and picked them up from the bar. VILLELA then rolled up the window. I requested for Officer Harder to respond and notified Dispatch, he rolled up in window. NIGEL ORTEGO was the back passenger in the vehicle.

I ordered VILLELA from the vehicle and after a few more attempts, he complied. I escorted VILLELA to the back of his vehicle. I asked VILLELA if he had been drinking and he said no. I could immediately smell a strong odor coming from him. I asked VILLELA if he was willing to submit to the field sobriety tests and he said NO. I advised VILLELA he was being detained for suspicion of DUI. I handcuffed VILLELA. At approximately 0208 hours, I read VILLELA his Miranda Rights from my card. VILLELA said he understood, but did not want to speak with me.

I searched VILLELA and found a baggy of white powder, which based on my training and experience, I suspected it to be Cocaine. The baggy was weighed at the Quincy Police Department, 10 grams. No other evidence was found on VILLELA. VILLELA was placed in my patrol car.

Due to VILLELA begin under arrest for DUI, I requested a Tow for the 12 HR hold. While completing an inventory search of the vehicle for the impound, I opened the center console. Inside the console was 3 sandwich baggies, several pieces of baggies, black digital scales with a white powdery substance, new (in box) digital scales, black cloth with white powder, multi-colored glass marijuana smoking device, and \$340.00 in cash. I also located another multi-colored glass

...NARRATIVE CONTINUES ON NEXT PAGE...

smoking device in the rear driver side door pouch. All items were collected as evidence. I photographed the items and downloaded the pictures to Digital Media.

ORTEGO denied the marijuana pipe in the rear passenger door was his. Both ORTEGO and VILLALOBOS said VILLELA picked them up from TIKI's Bar and they went to the store and bought some beer. The passengers were released. The vehicle was impounded by Quincy Tow with a 12-hour hold for the DUI. I transported VILLELA to the Quincy Police Department.

I processed VILLELA for the DUI. VILLELA refused to sign his Constitutional Rights, but signed and acknowledge everything else. VILLELA refused the breath test. I entered Refusal into the BAC machine. While I was completing the paperwork, VILLELA said several times that he knows where I live. He said that he lives two blocks from me and one block from Officer Harder. VILLELA said we have history.

VILLELA was issued VILLELA NOI for Speeding and Fail to Display Proof of Insurance. Officer Harder transported VILLELA to the Grant County Jail for Possession of Cocaine with Intent to Deliver, DUI, and Possession of Drug Paraphernalia.

Officer's Report for Citation/Notice of Infraction # 8Z0149146.
The information contained in and attached to this citation/notice of infraction is incorporated by reference into this report.

I CERTIFY UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON THAT ALL STATEMENTS MADE HEREIN ARE TRUE AND ACCURATE AND THAT I AM ENTERING MY AUTHORIZED USER ID AND PASSWORD TO AUTHENTICATE IT.

Signature: P. SNYDER #: 1004

...NARRATIVE CONTINUES ON NEXT PAGE...

Date and Place: 1/16/2018 City/Town of Quincy, County of GRANT

C

BROOKE DECUBBER

FILED
AUG 07 2018
KIMBERLY A. ALLEN
GRANT COUNTY CLERK

SUPERIOR COURT OF WASHINGTON FOR GRANT COUNTY

STATE OF WASHINGTON,

Plaintiff,

vs.

JOEL VILLELA,

Defendant.

No. 18-1-00030-3

ORDER CERTIFYING QUESTION TO
APPELLATE COURT

I. BASIS

The State filed a motion requesting the Court certify the question of the constitutionality of RCW 46.55.360 to the Appellate Court.

II. FINDINGS

The Court finds that:

- 2.1 There is a substantial ground for difference of opinion on this issue.
- 2.2 Immediate review of this question will materially advance the litigation.

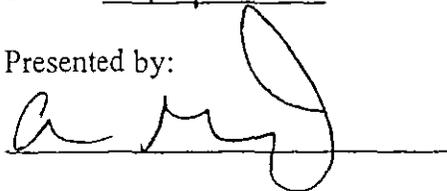
III. ORDER

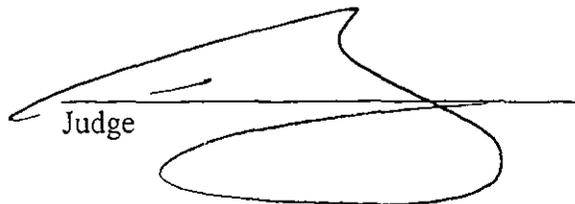
Based upon the foregoing findings, IT IS ORDERED:

- 3.1 The question of the constitutionality of RCW 46.55.360 is certified to the appellate court per RAP 2.3(b)(4)

Dated: 8/7/2018

Presented by:




Judge

Kevin J. McCrae WSBA #43087
DEPUTY PROSECUTING ATTORNEY

Agreed to by:



Susan Oglebay, WSBA #39209
Attorney for Defendant

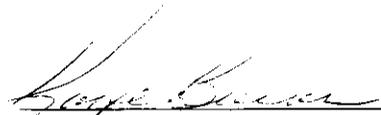
DECLARATION OF SERVICE

Under penalty of perjury of the laws of the State of Washington,
the undersigned declares:

That on this day I hand-delivered to the Office of Susan Oglebay,
Attorney for Respondent, a copy of the Amended Motion for
Discretionary Review at her office address below:

Ms. Susan Oglebay
Grant County Office Defense
35 C Street NW – 1st Floor Annex
Ephrata WA 98823

Dated: August 30, 2018.



Kaye Burns

GRANT COUNTY PROSECUTOR'S OFFICE

August 30, 2018 - 1:58 PM

Transmittal Information

Filed with Court: Supreme Court
Appellate Court Case Number: 96183-2
Appellate Court Case Title: State of Washington v. Joel A. Villela
Superior Court Case Number: 18-1-00030-3

The following documents have been uploaded:

- 961832_Motion_Discretionary_Review_20180830135701SC213528_9347.pdf
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Motion for Discretionary Review - Discretionary Review Superior Ct.
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- soglebay@grantcountywa.gov

Comments:

Amended Motion for Discretionary Review

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