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STATE OF WASHINGTON  
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No. 96183-2

SUPREME COURT OF THE STATE OF WASHINGTON

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STATE OF WASHINGTON, PETITIONER

v.

JOEL VILLELA, RESPONDENT

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ON DIRECT REVIEW FROM THE SUPERIOR COURT  
OF GRANT COUNTY

Cause No. 18-1-00030-3

The Honorable David Estudillo

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**REPLY BRIEF OF PETITIONER**

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## I. ARGUMENT

### A. VILLELA FAILS TO MEET HIS BURDEN OF PROVING RCW 46.55.360 UNCONSTITUTIONAL BEYOND A REASONABLE DOUBT.

Respondent Joel Villela bears the burden of proving, through argument, research, and searching legal analysis, that conflict between the collective privacy protections guaranteed under the federal and Washington state constitutions and the mandatory impound requirement of “Hailey’s Law,” RCW 46.55.360, is “plain beyond a reasonable doubt.” *Sch. Districts’ All. for Adequate Funding of Special Educ. v. State*, 170 Wn.2d 599, 605–06, 244 P.3d 1 (2010).

This Court maintains a high respect for Washington’s legislature as a co-equal branch of government, both branches being sworn to uphold the constitution with the legislature speaking for the people. *Id.* at 605. When faced with challenges to the constitutionality of a statute, this Court assumes the Legislature considered its constitutionality and must afford great deference to its judgment. *Id.* (citing *Tunstall v. Bergeson*, 141 Wn.2d 201, 220, 5 P.3d 691 (2000)).

Villela fails to satisfy this demanding standard, in part by neglecting to acknowledge that while a valid warrant generally satisfies the authority of law required by article 1, section 7 of Washington’s constitution, that authority is also satisfied by statute. *State v. Singleton*, 9

Wn. App. 327, 331, 511 P.2d 1396 (1973). He also fails to acknowledge that inventory searches are generally found reasonable under federal law and that the United States Supreme Court has held lack of officer discretion in these circumstances reduces the chance of pretextual searches. *S. Dakota v. Opperman*, 428 U.S. 364, 372; 383, 96 S. Ct. 3092, 3096, 49 L. Ed. 2d 1000 (1976).

B. ASSESSING THE CONSTITUTIONALITY OF RCW 46.55.360 ENGAGES THE INTERPLAY BETWEEN WASHINGTON'S DEMAND FOR AUTHORITY OF LAW TO DISTURB ITS CITIZENS' PRIVATE AFFAIRS AND THE FEDERAL FOURTH AMENDMENT PROTECTION FROM UNREASONABLE SEARCHES AND SEIZURES.

Both the United States Constitution and the Washington State Constitution protect privacy rights, although these protections are qualitatively different. *State v. Snapp*, 174 Wn.2d 177, 187, 275 P.3d 289 (2012) (citations omitted). The Fourth Amendment declares: “[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated.” Article I, section 7 of the Washington Constitution promises: “No person shall be disturbed in his private affairs, or his home invaded, without authority of law.” The refusal of our State Constitutional Convention to adopt language identical to that of the Fourth Amendment supports reading article 1, section 7 independently of federal law. *State v. Gunwall*, 106 Wn.2d 54, 66, 720 P.2d 808 (1986). Article 1, section 7 usually provides

greater protection than the Fourth Amendment, and when presented with arguments under both, this Court generally reviews the state constitution arguments first. *State v. Walker*, 157 Wn.2d 307, 313, 138 P.3d 113 (2006).

C. IMPOUNDMENT UNDER RCW 46.55.360 AND SUBSEQUENT INVENTORY SEARCHES ARE ACCOMPLISHED UNDER “AUTHORITY OF LAW.”

Unlike the Fourth Amendment, article 1, section 7 is not grounded in “reasonable” expectations of privacy. *State v. Arreola*, 176 Wn.2d 284, 291, 290 P.3d 983 (2012) (citing *Snapp*, 174 Wn.2d at 194). “Instead, article 1, section 7 is grounded in a broad right to privacy and the need for legal authorization in order to disturb that right.” *Id.* Its application requires a two part analysis: (1) whether the challenged action disturbs private affairs, and, if so, (2) whether authority of law justifies the intrusion. *State v. Miles*, 160 Wn.2d 236, 243–44, 156 P.3d 864 (2007).

The mandatory impound provision of RCW 46.55.360 undeniably disturbs private affairs. The intrusion complained of here is not the impoundment per se. It is the inevitable inventory search of the vehicle conducted prior to mandatory towing and storage. The question is whether authority of law justifies this intrusion. Washington courts generally approve impoundment inventory searches when taken following a lawful arrest and the impoundment is found to be reasonable and proper, and

where the search was not made as a general exploratory search for the purpose of finding evidence of a crime, but was made for the justifiable purpose of identifying and protecting property. *State v. Montague*, 73 Wn.2d 381, 385, 438 P.2d 571 (1968). Those are the circumstances for anyone whose vehicle is impounded under RCW 46.55.360. There is no impoundment absent probable cause for arrest for driving or being in control of a vehicle while under the influence of alcohol or drugs (DUI).

Further, “impoundment is lawful if authorized by statute or ordinance.” *Singleton*, 9 Wn. App. at 331. The stated purpose of RCW 46.55.360 is to require impound of any vehicle when its driver is arrested for DUI. Villela asserts the statute is unconstitutional because only a warrant provides the requisite authority to disturb private affairs under article 1, section 7. Br. of Resp. at 15. In support, he cites cases discussing narrowly drawn impoundment exceptions to the warrant requirement when no statutory authority is implicated, entirely ignoring co-equal authority for searches and seizures statutorily authorized. *Id.*

D. CONSTITUTIONAL CONSIDERATIONS – THE INTERPLAY BETWEEN ARTICLE 1, SECTION 7 AND THE FOURTH AMENDMENT.

Washington courts have long recognized the validity of warrantless inventory searches when a vehicle is lawfully impounded. *Singleton*, 9 Wn. App. at 331. But statutory authority does not end the analysis. *State v.*

*Reynoso*, 41 Wn. App. 113, 118, 702 P.2d 1222 (1985). Here is where the “reasonableness” requirement of the Fourth Amendment interacts with the legal authority demanded by article 1, section 7. The question “ ‘is not whether the search was authorized by state law. The question is rather whether the search was reasonable under the Fourth Amendment.’ ” *Id.* at 120 (quoting *Cooper v. California*, 386 U.S. 58, 61, 87 S.Ct. 788, 17 L.Ed.2d 730, *reh’g and modification denied*, 386 U.S. 988, 87 S.Ct. 1283, 18 L.Ed.2d 243 (1967)). “Resolution of this question requires a weighing of the governmental and societal interests advanced to justify such intrusions against the constitutionally protected interest of the individual citizen in the privacy of his effects.” *Opperman*, 428 U.S. at 377–78.

In *Opperman*, the Supreme Court considered the rationales behind routine post-impound inventory searches, “procedures developed in response to three distinct needs: the protection of the owner’s property while it remains in police custody; the protection of the police against claims or disputes over lost or stolen property; and the protection of the police from potential danger.” *Id.* at 369 (citations omitted). Because inventory searches are viewed as essential to respond to incidents of theft or vandalism, under the Fourth Amendment reasonableness standard, “the state courts have overwhelmingly concluded that, even if an inventory is characterized as a ‘search,’ the intrusion is constitutionally permissible.”

*Id.* at 369–71 (citing, among other cases *Montague*, 73 Wn.2d 381). After considering both state and federal impound/inventory search cases, the *Opperman* Court found “the decisions of this Court point unmistakably to the conclusion reached by both federal and state courts that inventories pursuant to standard police procedures are reasonable.” *Id.* at 372. “In applying the reasonableness standard adopted by the Framers, this Court has consistently sustained police intrusions into automobiles impounded or otherwise in lawful police custody where the process is aimed at securing or protecting the car and its contents.” *Id.* at 373.

In his concurring opinion, Justice Powell noted the benefit of removing police discretion concerning whether to conduct an inventory search, declaring policies limiting officer discretion tend to ensure searches are less likely to be pretextual. “In the case of an inventory search conducted in accordance with standard police department procedures, there is no significant danger of hindsight justification. The absence of a warrant will not impair the effectiveness of post-search review of the reasonableness of a particular inventory search.” *Id.* at 383 (Powell, J. concurring).

Neither is the reasonableness of an inventory search necessarily dependent on the existence of alternative “less intrusive” means. *Illinois v. Lafayette*, 462 U.S. 640, 647, 103 S. Ct. 2605, 2610, 77 L. Ed. 2d 65

(1983). The Court refused to “second guess” police department policies designed to deter theft by and false claims against its employees, finding it “evident that a stationhouse search of every item carried on or by a person who has lawfully been taken into custody by the police will amply serve the important and legitimate governmental interests involved.”<sup>1</sup> *Id.* at 648.

E. REASONABLENESS IN WASHINGTON—BALANCING PRIVACY RIGHTS AGAINST PUBLIC GOOD.

Although Washington recognizes the lawfulness of impoundment authorized by statute or ordinance, *Singleton*, 9 Wn. App. at 33, the test of reasonableness has been held applicable to statutory impoundment.

*Reynoso*, 41 Wn. App. at 118. Mr. Reynoso’s car was impounded and searched following his arrest for operating the vehicle without a valid driver’s license, as authorized by RCW 46.20.435. *Id.* Division Three of the Court of Appeals rejected the state’s assertion that a reasonableness analysis was not required for statutorily authorized impoundment, in part because, unlike here, “the language of RCW 46.20.435(1) indicates the Legislature did not intend that provision to be enforced indiscriminately without reference to the specific circumstances confronting the law

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<sup>1</sup> In *Colorado v. Bertine*, the Court clarified that “nothing in *Opperman* or *Lafayette* prohibits the exercise of police discretion so long as that discretion is exercised according to standard criteria and on the basis of something other than suspicion of evidence of criminal activity.” 479 U.S. 367, 375, 107 S. Ct. 738, 743, 93 L. Ed. 2d 739 (1987).

enforcement officer.” *Id.* at 119. The court looked at the statute as a whole and concluded the Legislature was primarily interested in preventing a continuing violation of the various traffic laws requiring proof of identity and obtaining a driver’s license. *Id.*

The circumstances of RCW 46.55.360, although similar, are distinguishable both in express legislative intent and in the severity of the crime sought to be thwarted by mandatory impound. The Legislature’s findings upon enactment of Hailey’s Law recited the state’s inability to eliminate the “great threat” to the lives and safety of Washington’s citizens. CP at 49. Impairment, accounting for over two hundred deaths annually, is the leading cause of traffic deaths in Washington. CP at 49. The Legislature recited that over thirty-nine thousand people are arrested annually for driving or controlling a vehicle while under the influence of alcohol or drugs and that these people may still be impaired after being cited and released. CP at 49. Before the law’s enactment, nothing prevented an impaired driver from returning to their vehicle, even an impounded vehicle, and regaining access while still impaired. CP at 49.

The question before this Court when assessing the constitutionality of RCW 46.55.360 is whether, under article 1, section 7 and the Fourth Amendment, the state’s interest in curtailing the “great threat” of death and injury attributable to impaired driving outweighs the privacy interests

of persons for whom there is probable cause to arrest for driving or controlling a vehicle while under the influence of alcohol or drugs. These crimes are not the minor traffic offenses sought to be curtailed by other impound statutes. These crimes, when resulting in death or injury, are the predicate crimes to vehicular homicide<sup>2</sup> and assault.<sup>3</sup> Noting that approximately one third of DUI arrestees are repeat offenders, the Legislature found impoundment provided an increased deterrent effect and forced some measure of accountability on registered owners who allowed impaired drivers access to their vehicles. CP at 49. That is, the punitive costs of which Villela complains are an intentional, integral part of this law. The imposed towing and impound costs do not fall on hapless innocents. Any sympathy for the financial aftermath of impaired driving is misplaced. The Legislature concluded: “Any inconvenience on a registered owner is outweighed by the need to protect the public.” CP at 49. While this, too, is harsh, it is harsh by design.

Unspoken in these findings are the circumstances of the case which led to “Hailey’s Law.” By making impound mandatory, the Legislature recognized that vesting individual law enforcement officers with circumstantial discretion could not ensure a correct decision would be

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<sup>2</sup> RCW 46.61.520(1)(a)

<sup>3</sup> RCW 46.61.522(1)(b)

made, a decision that would ensure an impaired driver could not regain access to the vehicle that was the instrument of his or her crime. Removing all discretion removed that risk.

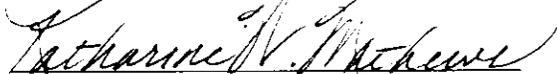
Villela has failed to prove beyond a reasonable doubt any conflict between RCW 46.55.360 and the privacy protections of article 1, section 7 and the Fourth Amendment. Hailey's Law was enacted after the Legislature weighed invasion of the private affairs of persons who choose to drive impaired against the public need to be protected from the dangers flowing from this criminal irresponsibility. Impoundment and subsequent inventory searches reasonably follow, and are conducted under authority of law.

## II. CONCLUSION

This Court should find the trial court erred when it concluded Hailey's Law, RCW 46.55.360, is unconstitutional.

RESPECTFULLY SUBMITTED this 1st day of May, 2019

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CERTIFICATE OF SERVICE

On this day I served a copy of the Reply Brief of Petitioner in this matter by e-mail on the following party, receipt confirmed, pursuant to the parties' agreement:

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Kaye Burns

**GRANT COUNTY PROSECUTOR'S OFFICE**

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