

No. 19-202

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**In the Supreme Court of the United States**

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SOLOMON MCLEMORE,

*Petitioner,*

v.

CITY OF SHORELINE,

*Respondent.*

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On Petition for a Writ of Certiorari to the  
Washington Supreme Court

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**REPLY BRIEF FOR PETITIONER**

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## ARGUMENT IN REPLY

- 1. Certiorari is necessary to correct the holdings of the Washington Courts concluding that failure to open the door to one's home is sufficient to sustain a conviction for obstructing a law enforcement officer.**

Solomon McLemore's Petition clearly establishes that there is a conflict between Washington law and federal precedent. The sole issue in this case is the authority of the officers, having lawfully entered the home, to arrest the occupant of the home for passively refusing to submit to the warrantless entry. The affirmance of McLemore's conviction leaves Washington alone as the only federal or state court that has reviewed this issue to sustain a conviction for obstructing under these circumstances. The City of Shoreline's Brief in Opposition fails to identify a single court case outside of Washington, federal or state, that has affirmed a conviction for obstructing after a homeowner has passively refused to open his door to a warrantless entry.

The City argues that the federal precedent cited in McLemore's Petition does not apply to this case because officers have a right and a duty to investigate potential domestic violence situations and protect potential victims. Opp., 14. But McLemore does not dispute, and has never disputed, the lawfulness of the warrantless entry into his home for this purpose. The City's argument, distinguishing the case law cited by McLemore on the ground that this case involved a potential

domestic violence situation, misapprehends the force of this Court's prior holdings and highlights why it is important for this Court to grant certiorari. This Court should take this opportunity to clarify that the case law concluding a person may not be lawfully arrested for passively resisting a warrantless entry into his home applies equally to all warrantless searches of homes.

The split decision of the Washington Supreme Court in this case also leaves unchanged an earlier Washington Court of Appeals decision, *State v. Steen*, 265 P.3d 901 (Wash. Ct. App. 2011). The Washington District Court, the King County Superior Court, the Washington Court of Appeals, and the Washington Supreme Court, each denied McLemore's motion to dismiss, based on *Steen*, which is the current state of law in Washington. App. 1, 43, 54, 47. In *Steen*, the Washington Court of Appeals held that a person's refusal to open the door to their trailer home and exit, when commanded to do so by officers lawfully conducting a search pursuant to their community care function, amounted to conduct punishable under the obstruction statute. *Steen*, 265 P.3d at 908.

The City opines in its Brief in Opposition, and McLemore agrees, that *Steen* "upheld a similar conviction" in a published decision that clearly carries precedential value, as evidenced by the fact that all of the lower Courts felt bound by its authority when they denied McLemore's appeals. Opp., 5. The split decision of the Washington Supreme Court failed to overturn this Washington

precedent, which clearly conflicts with federal precedent.

This Court has the authority to grant certiorari, as the decision to uphold McLemore’s conviction conflicts with existing case law and involves an important federal question as to one’s duty to do more than passively submit to police during a warrantless search of their home. This Court recently granted review where the lower Court was equally divided. *Lucia v. S.E.C.*, 585 U.S. \_\_\_, 138 S. Ct. 2044, 2050–51 (2018). See, also, *Thompson v. City of Louisville*, 362 U.S. 199 (1960) (granting certiorari of the Louisville Police Court decision to impose a \$10 fine even though the decision was not otherwise appealable under Kentucky law because the “due process concerns [were] substantial”).

The City also now argues that there is a factual issue, but all of the decisions to uphold McLemore’s conviction are based on the conflicting precedent of *Steen*. Prior to trial, McLemore moved to dismiss the charge on the grounds that applying the obstructing statute in this manner infringed on his Fourth Amendment Right. App. 4. The Judge denied the motion, concluding that the charges were sustainable under *Steen*. App. 43. There was no mention of McLemore’s conversation with the other occupants of the home in the King County order. *Id.* The District Court denied the motion, because McLemore refused to open his door. *Id.*

After McLemore was found guilty, he appealed this issue to King County Superior Court. The Court affirmed the conviction holding that: “The evidence was sufficient to support a *prima facie* showing that

the Defendant committed the crime of obstructing pursuant to *State v. Steen*". App. 45, 46. Similarly, there was no mention of McLemore's conversation with the other occupants of the home in the King County Decision on RALJ Appeal. *Id.* Again, the Court denied McLemore's appeal because he refused to open his door. *Id.*

McLemore next appealed this issue to The Washington Court of Appeals. The Court of Appeals Commissioner denied review, stating:

The trial court and superior court reasoned that this case is more like *State v. Steen*... A person commits obstruction by willfully hindering, delaying, or obstructing a law enforcement officer in the discharge of his or her official powers or duties. RCW 9A.76.020. *Steen*, 164 Wn. App. at 798. It is undisputed that Mr. McLemore's refusal to open the door was willful. And there was evidence from which a rational trier of fact could find beyond a reasonable doubt that he hindered, delayed or obstructed the officers in performance of their community caretaking function. *Steen*, 164 Wn. App. at 800.

App. 52-54. The Court of Appeals Commissioner declined to accept review of this case, because McLemore refused to open his door to the police during a warrantless search. *Id.*

The Washington Supreme Court accepted review of this matter to address whether a homeowner has an obligation to assist police during

a warrantless search and whether it is obstructing to refuse to assist. Neither opinion issued by the Washington Supreme Court garnered a majority. The court split four to four, resulting in the lower Appellate Court decision being affirmed, upholding *Steen*. App. 37-38. Four Justices signed the opinion overturning *Steen*, which would bring Washington case law in alignment with its federal counterpart. App. 1, 8, 13-16. Four Justices signed the opinion upholding *Steen*, holding that it is obstructing for a homeowner to not unlock their door for the police during a warrantless search. App. 28, 32, 35-36.

Not only was this the sole issue addressed by the lower appellate Courts, but it was the issue argued by the City of Shoreline throughout their closing argument at trial. The City argued, “He knew that not complying with the officer commands to open the door and to come down and talk with them, would delay their ability to get inside and talk with occupants inside and to check and make sure they were okay. He knew that would hinder their ability to do that investigate [sic].” App. 5, 80-81. Then during deliberations, the jury inquired of this very issue asking: “Does a person have the legal obligation to follow the police instructions, in this case?” App. 5.

While some of the lower Courts briefly addressed McLemore’s conduct towards the other occupant, all of the Court decisions in this case to uphold his conviction and deny his motion to dismiss were based on his passive refusal to open the door, upholding the precedent established in *Steen*. This is a significant issue that conflicts with federal



precedent and it has been properly preserved for this Court's review.

**2. There is no factual dispute that would prevent this Court from granting certiorari.**

The City in its Brief in Opposition attempts to create a factual dispute that has not hitherto existed. Opp., 11-12. The issue in this case was never whether McLemore's statements to the other occupant<sup>1</sup> constituted obstructing. The issue which McLemore asks this Court to address is not based on his conduct toward the other occupants of the house, but on the current state of the law in Washington which criminalizes the act of passively refusing to open a door during a warrantless search.

To the extent that McLemore's statements to the other occupant may be an issue, they are addressed here. The attached excerpts from the trial transcript, in Appendix J, show that McLemore did not prevent the other occupant from talking to the police or from opening the door. Nor does it show that McLemore coached her or forced her to do anything. App. 57.

McLemore had recorded the interaction with the police. App. 4, 72. From the entirety of this recording the City takes issues with three statements McLemore made to the other occupant of the home. Opp., 3-4, 11-12. In two of these statements, McLemore specifically tells the other person to talk to the police. The officers only

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<sup>1</sup> The "other occupant" is used to avoid subjecting her to unwanted publicity. No disrespect is intended.

witnessed one of the statements. Deputy Dallan testified that:

at some point a female comes to the door and he said tell them you're okay. We had been telling him we need to make sure that everyone is okay. We need to know that everyone is okay because of what is going on here. So the female at some point comes to the door and he says, tell them you're okay. The female said I'm okay. At this point they both said something like we're scared or something of that nature. But we tell them, we can't just take your word for it. You're telling her to tell us you're okay isn't enough for us to verify that you're okay. He could be forcing you to say this. We have no idea. You're behind a door and we have no idea what's going on. We need to investigate.

App. 62. When Deputy Emmons was asked about the other occupant, he testified:

Well, and I don't remember the exact timeline. At some point I did see the female at the top of the stairs. I don't know if that's when we had a bigger hole in the door or exactly what was the course. But I talked to the male first. He walked away. Then we talked to a female who said that she was fine, that she didn't need any assistance.

App. 68. Deputy Boyer did not have any contact with the occupants of the home prior to breaching the

door, and did not hear any conversation between McLemore and the other occupant.<sup>2</sup> App. 59.

The second statement the City takes issue with was that McLemore told the other occupant to go talk to the police and that she needed to be mad. App. 72-74. No one testified that this statement was coercive or threatening and the officers never heard McLemore make this statement. The City of Shoreline is now trying to argue that McLemore interfered with the officers by preventing the other occupant from talking to the police, by citing two statements where he specifically told the other occupant to talk to the police.

The third statement, was that McLemore told the other occupant that he would go to jail if they opened the door.<sup>3</sup> App. 20 n.2, 74. Nowhere in the entire

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<sup>2</sup> In its Brief in Opposition, the City mistakenly claimed for the first time and inconsistent with the entire record, that the “deputies repeatedly asked McLemore to let them see the woman in the apartment, talk to her, and make sure she was unharmed. McLemore refused, telling them to go away. (Pet App.21).” Opp., 3. This is not accurate and not supported by the record. App. 20 n.2, 21, 59, 61-63, 67-68. The City also mistakenly claimed, for the first time and inconsistent with the entire record, that “the deputies broke open the door and ran upstairs to check on [the other occupant] and her baby.” Opp., 4. Deputy Emmons clearly testified that when they breached the door, they called the occupants down to them and they exited the house. App. 70. The other officers testified that they were not present when the other occupant exited the house. App. 59, 64. The other occupant also testified that she was at the door when the officers entered. App. 79.

<sup>3</sup> The City of Shoreline also mistakenly claimed that McLemore told the other occupant that “she” would go to jail if “she”  
(continued . . .)

recording does McLemore threaten the other person, prevent her from opening the door or prevent her from talking to the police. Nor does anyone testify that McLemore did these things. The City takes issue with the two statements where McLemore tells the other occupant to talk to the police and the one saying he will go to jail. Likely there is nothing McLemore could have said that the City would not take issue with.

The City is asking this Court to ignore the entirety of the evidence in order to create an issue where none existed. Prior to entering the house, the officers testified that McLemore may have been coercing the other occupant to say she was okay, because they did not know what was happening on the other side of the locked door. App. 20 n.2, 62, 68-69. They never testified that it was coercive, only that it may have been coercive, which was why they wanted to gain entry into the house. *Id.* However, once the officers entered the home and interviewed all the parties, they learned she was okay and he was not threatening her or forcing her to do anything. App. 4. At no point during the officers' investigation or during any of the testimony in this case did anyone say McLemore threatened or coerced the other occupant. *Id.* The other occupant also testified in this case and said she was never threatened or coerced by McLemore. App. 75-78.

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opened the door. Opp., 4. At no point does McLemore threaten the other occupant or tell her she will go to jail if she opens the door. The only testimony was in regards to a recorded statement that McLemore made that he would go to jail if they opened the door. App. 20 n.2, 74.

This was just an argument the couple had out on the balcony so they did not wake up their baby. App. 3.

This Court should not countenance the attempt by the City at this late date to create a factual dispute where none has hitherto existed. The City has consistently argued in the trial court, the King County Superior Court, the Washington Court of Appeals, and the Washington Supreme Court that the crime of obstructing occurred when McLemore failed to open the door when commanded to do so. The legal issue in this case has always been whether a homeowner has any duty to open the door to the police during a warrantless search. All of the decisions in this case that have upheld McLemore's conviction are based on this undisputed fact and the conflicting precedent of *Steen*.

## CONCLUSION

For the foregoing reasons and those set forth in the Petition, the Petition for a Writ of Certiorari should be granted and the decision of the Washington Supreme Court reversed.

Respectfully submitted,

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NOVEMBER 21, 2019

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## **APPENDIX**

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**APPENDIX J**

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**IN THE SUPERIOR COURT OF THE STATE  
OF WASHINGTON  
FOR THE COUNTY OF KING**

_____ SOLOMON MCLEMORE,	)	
Defendant/Petitioner,	)	16-1-07811-3SEA
	)	
v.	)	
	)	
CITY OF SHORELINE,	)	ELECTRONIC RECORD
Plaintiff/Respondent.	)	TRANSCRIPTION
_____	)	

THE HONORABLE JUDGE SMITH THE  
HONORABLE JUDGE ANDERSON

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McLemore, Page 36  
(Testimony of Deputy Boyer)

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A: And I always, whenever I'm talking in quotes I always like to make sure I am getting it right. So that's why I was just generalizing at the time. But what I had written down before was I heard her say you can't leave me out here and I'm going to call the police. And then the third one was something along the lines of I'm reconsidering our relationship.

Q: And how would you describe the tone of that voice and perhaps the - how loud that voice was?

A: It was very loud. It was like about 1:30 in the morning. There were no other noises coming from down that street. There's a bar across the street, but I think that was closing. I didn't hear anything from there.

Q: There was no other noises in the area. And it was very distinct and very loud. There was a, I think, a townhouse unit just south of there. Definitely probably the neighbors started hearing that (inaudible) (inaudible).

A: And could you tell the demeanor of that particular person based upon how you were hearing her voice?

A: She sounded in duress, upset. Yeah, it was very loud yelling.

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McLemore, Page 43 (Deputy Boyer)

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Q: And did you ever get any response from inside the house?

A: I was on the back side. I could hear the yelling. What I understood was that Dispatch had a line inside of someone talking on the phone. But I wasn't on the phone so I didn't hear any distinct stuff. I heard them yelling through the door, but that's - I couldn't understand what was being said as I was on the back side of the property.

McLemore, Page 44 (Deputy Boyer)

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Q: When eventually you did come upstairs, did you have any contact with any of the occupants of the home?

A: The gentleman was being taken out to the car and I was still back at my car. I had - someone brought the female out to my car with me and I spoke to her at my car.

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McLemore, Page 59  
(Testimony of Deputy Dallon)

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Q: All right. When you arrived on scene and you said you were able to locate where the argument was coming from, the apartment the argument was coming from, where did you go?

A: So initially we all came back here and could hear arguing. And then I remember everything that was said, but things along the lines of - I could hear the female saying I'm going to call 911, or I want to call 911 or the police, something to that extent. And so we decided we were going to go knock on the front door to try and get them to come to the door so we could see what was going on.

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McLemore, Page 64 (Deputy Dallon)

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Q: How long were you there before you ever got a response?

McLemore, Page 65 (Deputy Dallon)

A: I mean I'd have to guess six to ten minutes. When we started getting responses Deputy Emmons tried to kick the door, but we realized it was -kick the door in, but the door opened out. So it was not going to work. So I had a little pickaxe

in my car. We had asked the fire department to come with breaching tools, but because we were very concerned with what was going on in the home I started trying to break the lock off the door to get in. And as I was doing that, that is when I finally made contact with the male through the door.

Q: Describe that contact.

A: The conversation was a little bit repetitive. We're the police, you need to let us in. The male kept saying I don't have to let you in. I don't know who you are, things of that nature. At this point Deputy Emmons is at the door with me. And we're telling him, you need to let us in. You can call the police, 911. They'll tell you that we're the police, let us in.

Q: Were you dressed - how were you dressed?

A: I was dressed just like this.

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McLemore, Page 66 (Deputy Dallan)

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Q: But anyways, you announced yourself and verbally told this individual that you were the police?

A: Yes.

Q: And could you hear him through the door?

A: Yes.

Q: And could you tell if he could hear you through the door?

A: He was responding to what we were saying.

Q: At any point did he open the door? Was the door cracked or was it still shut?

A: It was still shut.

Q: Describe kind of an ongoing conversation with him or anything that you were hearing the defendant saying through that door.

A: So as we continued kind of in this repetitive loop of conversation, at some point a female comes to the door and he said tell them you're okay. We had been telling him we need to make sure that everyone is okay. We need to know that everyone is okay because of what is going on here. So the female at some point comes to the door and he says, tell them you're (cont.)

McLemore, Page 67 (Deputy Dallan)

A: (cont.) okay. The female said I'm okay. At this point they both said something like we're scared or something of that nature. But we tell them, we can't just take your word for it. You're telling her to tell us you're okay isn't enough for us to verify that you're okay. He could be forcing you to say this. We have no idea. You're behind a door and we have no idea what's going on. We need to investigate.

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McLemore, Page 68 (Deputy Dallan)

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Q: When you told the defendant to open the door, what did he say in response to you?

A: Things like I don't have to. You know, police, you're violating my rights, things of that nature.

McLemore, Page 69 (Deputy Dallan)

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Q: And what did you do once the door got opened?

A: I saw Solomon. We took Solomon. We detained - he was identified as Solomon McLemore. We took custody of him at that point and I escorted him over to my police car while the other deputies went to check the apartment and to deal with the female.

Q: And when you came in and contacted Mr. McLemore - is Mr. McLemore in the courtroom today, actually?

A: Yes.

Q: Okay. Can you describe something he's wearing for the jury? Purple button up shirt.

A: And when the door was eventually breached, where was he standing?

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A: I wasn't the one who put handcuffs on him so I didn't see exactly. But he was in the doorway because they almost instantly hand hands on him. He had to be pretty close to the doorway.

Q: Close enough to be able to open it from the inside?

A: Yes.

Q: And could you see immediately where the female half was?

McLemore, Page 70 (Deputy Dallan)

A: I don't recall.

Q: From your vantage point there could you see if there was anybody else in the (inaudible) room?

A: I didn't note that there was.

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McLemore, Page 96  
(Testimony of Deputy Emmons)

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A: I did. At first I was kind of confused because I figured the disturbance would be happening to the north side because there were apartments there. I wasn't aware that there was an apartment complex there at the drycleaners. And so we walked that direction and we could hear the sound of a female yelling. I could hear a muted male in the background and we just tried to ascertain exactly where it was coming from. It was a dark night, kind of misty. Things were a little bit echoing.

Q: Okay. The female's voice was much clearer than the male's voice?

A: Correct.

Q: Could you hear what the female was saying, if anything?

A: I did. I noted it exactly in my report what I believe I heard. But she said that she wanted to call 911, she wanted out of the relationship and she wanted to leave.

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McLemore, Page 103 (Deputy Emmons)

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Q: Okay. All right. So did those additional tools eventually arrive?

A: They did. I don't remember the exact set of circumstances. But I know that Deputy Dallan was at the door with a hatchet and I do remember that (cont.)

McLemore, Page 104 (Deputy Emmons)

(cont.) Mr. McLemore came down to the door and we had a conversation through a little hole in the door, which is kind of eerie. It was odd.

Q: That was going to be my next question. When you started to make any attempts to get through the door did you ever have any contact with the male voice on the other side?

A: Yes, absolutely.

Q: And so describe that contact and the nature of the conversation.

A: So we're hacking away at the door. And during this whole timeframe, by the way, when we're hailing on the PA system on the outside, I intentionally key up my radio so I can hear things going on. So there's recorded sounds of what's going on over this period of time. So when I'm yelling over the PA earlier while I was in the vehicle, we keyed up a couple of times so you

could hear the PA in the background. When we're at the door hacking away and making a large amount of noise I key up a couple of times so I can hear what's going on. At that point I saw a male approach me and he says a couple things to me and we have a back and forth. And the biggest thing I want him to do is open the door and come out. I don't need to destroy the door if I don't need to do so. He refuses to come out.

Q: Okay. So at one point the male on the other side of the door approaches the door?

A: Absolutely.

Q: What does he ask you or say to you?

McLemore, Page 105 (Deputy Emmons)

A: He tells me to go away and says I'm violating his civil rights, that I have no right to come inside. I inform him that was not correct. I do have the right to come inside. I told him why we were doing so.

Q: And what did you tell him in terms of why?

A: I told him we fear about the people's safety inside. If everybody comes to the door and opens the door and get inside and talk to people, then we can sort things out that way. If he doesn't, we will continue doing as we're doing and we will come inside.

Q: Okay. And did he comply with your commands to come outside?

A: He did not. He did not.

Q: Did he comply with your command to open the door?

A: He did not.

Q: Did he make any statements to you that led you to believe that he was not going to do either one of those?

A: Yes. He said that he was going to sue us and he walked away. And I don't remember if I knew there were stairs then, but he walked away from viewpoint and that small little hole we had in the door.

Q: So you were able to have some visual inside the apartment to see at least him?

A: Correct.

Q: Could you see the rest of the apartment to see if there were any other injured individuals or the female? Did you ever see her?

McLemore, Page 106 (Deputy Emmons)

A: No. Well, and I don't remember the exact timeline. At some point I did see the female at the top of the stairs. I don't know if that's when we had a bigger hole in the door or exactly what was the course. But I talked to the male first. He walked away. Then we talked to a female who said that she was fine, that she didn't need any assistance.

Q: Okay. Did you know if there was anyone else in the apartment?

A: No. And that doesn't pacify me at that point either. Things are ongoing...

Q: Why not?

A: Because people, when they're scared or they're under threats of harm, they're going to lie and not tell us the truth because they want everything else to be safe inside. So I just cannot trust things on eyesight or hear sight. We need to still make entry into that apartment and make sure that everybody was safe.

Q: Okay. At that point did you know that there was an infant child?

A: You know, I don't remember if there was a child in her arms or if we discovered that after the fact. I just don't recall off the top of my head. It may be in my report.

Q: Okay. All right. Could you see the entire apartment or just the stairwell?

A: No. When we had a bigger hole in the door I could see the stairwell going up.

Q: And that's it?

A: Correct.

Q: None of the other rooms of the apartment or anything of that nature?

McLemore, Page 107 (Deputy Emmons)

A: No.

Q: Okay. Did you ever hear the male give commands to the female half regarding if she should talk to the police or what she should say?

A: I know that was back and forth between the two. I don't remember exactly what was said.

Q: Were you able to eventually make entry into the residence?

A: Yes. The fire department was able to bring some breaching tools. At that point we were still very exposed and we had the discussion with somebody inside. Time is of the essence. So we were finally able to breach that door and pull it open. At that point we called them down to us. I popped the door open. I was off to the left. I went to the right so I could have cover of the brick wall. Everyone else kind of spread out. I forget who came out first. I know I contacted the female, brought her out, patted her down and asked her what was going on.

Q: Okay. So you were primarily contacting her?

A: Correct. I took her out to my car which was around the back side. The male and female were together and I wanted to separate the two, of course, because people, when they're in the company of each other, don't tell the truth or feel that they cannot tell the truth. So we always separate them quickly. I brought her out to my

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car where it was nice and quiet and asked her what was going on. And I still don't know if she's a suspect or victim at this point. So I did frisk her to make sure she didn't have any weapons. And then we sat down and chitchatted really quick.

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App. 72

McLemore, Page 175  
(Testimony of Solomon McLemore)

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(Video is played for the jury)

Q: Now after hearing that, you tell her to go talk to them.

A: Yeah.

Q: And then under your breath, you need to go talk to them now and you need to be fing mad.

A: Yeah. If it's under my breath, I don't...

Q: Did you hear that? Should I play it again?

A: Yeah. No. Like you said, under my breath, but definitely no one could hear that.

Q: But you were still commanding her on how to talk to the police, correct?

A: No. I just needed to voice the opinion that she needed to be upset. This is very serious.

Q: So you were telling her how to act with the police, correct?

A: I'm catching her up to speed because she wasn't down there.

Q: You were telling her how to act with the police, correct?



A: I was giving her my opinion.

Q: Okay. And you were telling her how to act with the police that she needed to be upset, correct?

A: I don't believe I was. I don't.

Q: Okay.

A: If it was that quiet, then I don't get how the police could have heard it.

McLemore, Page 176 (McLemore)

Q: All right. They certainly heard the first one when you said she needed to talk to the police though?

A: Okay.

Q: So you told her that twice?

A: To talk to the police?

Q: Once loud enough for the police to be there and once under your breath, telling her...

A: Yeah...

Q: ...that she better talk to the police. I'll back that up just a bit.

A: But what you're saying is that I told her to talk to the police.

(Recording is played for the jury)

Q: Right here.

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A: I didn't swear. I didn't tell her she needed to be fucking mad.

Q: And right there did you tell her if you go outside that you're going to jail?

A: Yeah, that was my opinion.

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McLemore, Page 188  
(Testimony of Lisa)<sup>1</sup>

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A: Basically the argument kind of had fizzled out at that point. It was late and I decided I wanted to go to bed. I was like okay, it's done. I'm over it. I'm tired. I hadn't slept much because of the baby. I'm not sure how long after that, but not long after that is when I started hearing the doorbell just bing, bing, bing, bing, bing, bing, and then pounding.

Q: Okay.

A: And you know it was early hours in the morning and I think at first I really didn't know what was going on. And then it was shortly after all the banging and dinging, we didn't really know what was going on, and then we hear like a loudspeaker or some kind of a microphone or something, someone telling us to, excuse my language, but open the fucking door.

Q: Okay.

A: And I think at that point I started getting concerned, worried, and it had actually woken up my son. So I think I actually had gone in to get my baby.

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<sup>1</sup> Out of respect to the other occupant, she is listed here as Lisa.

McLemore, Page 189 (Lisa Testimony)

Q: Okay. And then so at that time you made - there was no contact with the police then?

A: As far as me talking? Us talking to them?

Q: Yeah.

A: No. There was no - no, we didn't speak to them at all at that point.

Q: Did you ever talk to the police?

A: I did talk to the police at one point. Well, at two points. One time when I was inside the house from the stairs.

Q: Okay.

A: And at that point I said something - at first I was like frozen. I didn't really know. I was scared and in disbelief at what was even transpiring.

Q: Okay.

A: I was having a hard time coming to terms so I was having a hard time saying anything. I just kind of sat on the couch like is this even real? This isn't even happening. And then at one point I think I had told the police you're scaring me. You're scaring my son. You guys need to leave. You know? This is between hearing them trying to break our front door down and I didn't think they had any reason to even be doing that in the first place, you know? I was very scared.

Q: Okay. Did your fear and anxiety ever stem from your interactions with Mr. McLemore?

A: No. No.

McLemore, Page 190(Lisa Testimony)

Q: When you got off the couch and you came to the stairwell where Mr. McLemore was talking to the police through the door, were you fearful of anything Mr. McLemore ever said to you?

A: No, no.

Q: Were you fearful of any of his actions?

A: No.

Q: Did you ever feel any type of fear or anxiety from anything stemming from Mr. McLemore?

A: No, not at all.

Q: Okay. Could you please tell me a little bit more about how the interaction with the police made you feel?

A: It was probably the most terrifying experience that I've ever had as far as the whole way-the way they talked to us from the beginning, it was hard for me to believe that it was the police because I didn't believe that was conduct becoming of a police officer to say open your fucking door.

MS. MCDONALD: Your Honor, I'm going to object as the opinion evidence at this juncture and to the relevance.

JUDGE ANDERSON: Overruled and overruled.

A: And so I just didn't think the conduct, how they approached us, was for our wellbeing. I thought - I was scared. I was scared for my safety, my son's safety, and my family's safety at that point. Once we had the interaction downstairs as far as you guys need to leave, I remember I was standing close to the mid to the bottom of the stairs and the next thing I knew I had (cont.)

McLemore, Page 191 (Lisa Testimony)

A: (cont.) woodchips flying at me, hitting me in the face and the neck, and then I don't remember what point I started screaming, but I remember I looked and the police had their guns drawn.

Q: Okay.

A: It was just very, very scary.

Q: And so the - I'm sorry if you need a moment.

A: No, I'm okay.

Q: Okay. So they eventually breached the door, correct?

A: Correct.

Q: And then what happened after that?

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A: So after they breached the door they pulled me and him out separately. They took me to a police car that was kind of behind my house, but more by the lumberyard gate and then sat me down. I believe at that point is when I - I don't know what I had to said to them, but they asked me questions about if he had hurt me.

Q: Okay.

A: And you know I indicated no, there had been no violence at all.

Q: Okay. At any point were you put in the back of a police officer's car?

A: They sat me down in the back of a car, yes.

Q: Did they put you in handcuffs?

A: No.

Q: Were you arrested?

A: No.

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McLemore, Page 205  
(Closing Argument of the City of Shoreline)

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And that's all imparted to the defendant and the defendant acknowledged in his own testimony that he heard all of that and that he acknowledged all of that. But he heard the officer use one swear word and that was it for him. He wasn't going to do anything. He wasn't going to follow a command. He wasn't going to listen to them. He wasn't going to do anything that the officers were telling him to do. He dug his heels in. He acted willfully with the knowledge of what they were trying to accomplish. In his statements to the officers, you're not coming in. We're not letting you in. You need to go away. He acted willfully.

And the definition that you have in your instructions of willfully, it means to purposely act with the knowledge that his actions will hinder, delay or obstruct a law enforcement officer in the discharge of their official duties. He knew that not complying with the officer commands to open the door or to come down and talk with them, would delay their (cont.)



McLemore, Page 206 (Closing Argument)

(cont.) ability to get inside and talk with occupants inside and to check and make sure they were okay. He knew that that would hinder their ability to do that investigation. He knew that it would delay that investigation.

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McLemore, Page 210 (Closing Argument)

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Any act or any inaction of the defendant, meaning a failure to comply with a command or something along those lines- anything that hinders an officer's ability to perform their duty is the crime of obstructing a law enforcement officer. Anything that delays their ability to complete their investigation constitutes the crime of obstructing a law enforcement officer. Anything that obstructs their ability to perform their duties is obstructing a law enforcement officer.

Look at this in the totality. All of the facts put together, all of the surrounding circumstances. The defendant's demeanor, the situation he's in, his interaction with the police, his refusal to comply with their commands, the length of time that his interaction with the police delayed their ability to do that, to ensure that everyone was all right constitutes the crime of obstructing a law enforcement officer And I would ask that you would find that the City has proven each one of these

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elements beyond a reasonable doubt and find the defendant guilty of obstructing a law enforcement officer.

JUDGE ANDERSON: Thank you. Please draw your attention to Mr. Kutzner on behalf of the defense.

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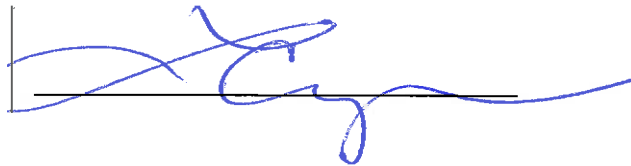
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McLemore, Page 227

I, Lynne Campeau, certify under penalty of perjury,  
of the laws of the State of Washington, that the  
following is true and correct to the best of my skill  
and ability.

DATED this 7th day of February, 2017 in Federal  
Way, Washington.

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Lynne Campeau