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No. 99062-0

IN THE WASHINGTON SUPREME COURT

STATE OF WASHINGTON,

Petitioner,

v.

REECE BOWMAN,

Respondent.

SUPPLEMENTAL BRIEF OF RESPONDENT

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A. INTRODUCTION

Your cell phone notifies you of a new text message. The message is from a phone number you do not recognize, but appears to be from a friend, who got a new phone and number. After exchanging some messages with the sender, who provides corroborating details, you reasonably conclude this is your friend. You exchange further messages and decide to meet with your friend in person where you last met.

In fact, this is not your friend. It is a government agent impersonating your friend. Without anyone's consent, the government agent elicited private communications from you which were intended to be received by your friend. Before perpetrating this invasion into your private affairs, the government did not secure a warrant and no exception to the warrant requirement excused the invasion.

As the Court of Appeals held, under this Court's decision in State v. Hinton, 179 Wn.2d 862, 319 P.3d 9 (2014), this conduct violated article I, section 7 of the Washington Constitution because it intruded upon a private affair—text communications—without authority of law. State v. Bowman, 14 Wn. App. 2d 562, 472 P.3d 332 (2020). Additionally, the government's conduct violated article I, section 7 because it was a trespassory search of an effect—a cell phone—without authority of law. For either of these reasons, the Court of Appeals should be affirmed.

B. ISSUES

1. In Hinton, this Court held a text message conversation is a private affair that may not be invaded without authority of law. A person does not expect governmental intrusion into a text conversation with a known associate. Reece Bowman received and responded to text messages from Mike Schabell, a known associate of Mr. Bowman's. In fact, law enforcement was impersonating Mr. Schabell. Law enforcement did not have Mr. Schabell's consent to impersonate him. In applying Hinton, did the Court of Appeals properly hold that the government invaded Mr. Bowman's private affairs?

2. Both a "search" and an invasion into a "private affair" occur when the government trespasses upon a constitutionally protected area with the purpose to obtain information. Sending uninvited text messages to a person's cell phone using a false identity is a trespass to a chattel. Using a false identity and with the purpose of trying to obtain information from Mr. Bowman, law enforcement sent uninvited text messages to his cell phone. Did this trespassory invasion constitute a "search" or intrusion into a "private affair"?

C. STATEMENT OF THE CASE[1]

Law enforcement arrested Mike Schabell. Bowman, 14 Wn. App. 2d at 564. A law enforcement officer obtained permission from Mr. Schabell to examine his cell phone. Id. After examining text messages Mr. Schabell had exchanged with Reece Bowman, the officer decided to impersonate Mr. Schabell and invite Mr. Bowman to engage in an illicit drug transaction. Id. at 564-66. No evidence shows that the officer obtained Mr. Schabell's permission to impersonate him. Id. at 570.

Claiming to be Mr. Schabell, the officer sent Mr. Bowman text messages from a cell phone belonging to law enforcement, which had its own number. Id. at 564-66. Using details gleaned from Mr. Schabell's cell phone, the officer represented he was Mr. Schabell. He sent a message stating his previous cell phone had broken. Id. He stated that they had met earlier that day at a 7-Eleven. Id. at 565. Mr. Bowman and "Mr. Schabell" agreed to meet at the same 7-Eleven where they had met earlier. Id. Shortly after Mr. Bowman's arrival, he was arrested. Id. at 566. Law enforcement found drugs on Mr. Bowman's person and in his car, and later elicited incriminating statements from him. Id. at 566.

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[1] The relevant facts are set out in greater detail in the Court of Appeals' opinion and Mr. Bowman's opening brief. Bowman, 14 Wn. App. 2d at 564-66; Br. of App. at 3-5.

After being charged with a drug offense, Mr. Bowman moved to suppress the evidence, contending that the actions of law enforcement violated article I, section 7 and the Fourth Amendment. Id. at 566; CP 36-49. He relied on this Court's opinion in State v. Hinton, 179 Wn.2d 862, 319 P.3d 9 (2014). Hinton held virtually identical conduct by law enforcement violated article I, section 7. 179 Wn.2d at 865-75. Nevertheless, the trial court denied Mr. Bowman's motion to suppress, reasoning that Hinton did not apply because law enforcement used its own cell phone with its own number. CP 93-102.

The Court of Appeals reversed, holding that Mr. Bowman "reasonably believed he was texting with a known contact" and that, as in Hinton, Mr. Bowman "had a reasonable expectation of privacy for that conversation." Bowman, 14 Wn. App. 2d at 569. The Court rejected the prosecution's argument, raised for the first time on appeal, that the invasion into Mr. Bowman's private affairs was authorized under the consent exception to the warrant requirement. Id. at 569-70. The evidence did not show Mr. Schabell consented to law enforcement impersonating him. Id. at 570. And there was no showing by the prosecution that Mr. Schabell had authority to consent to law enforcement invading Mr. Bowman's privacy interest in his text communications. Id. at 569-70. The Court of Appeals did not reach Mr. Bowman's additional argument that

law enforcement's sending of uninvited text messages to his phone, with the purpose of learning information, was a trespassory search or invasion into a private affair in violation of article I, section 7 and the Fourth Amendment.

The prosecution petitioned for review. Mr. Bowman cross-petitioned on the trespass argument that the Court of Appeals did not reach, along with issues concerning legal financial obligations. This Court granted both petitions.

D. ARGUMENT

1. Under *Hinton*, law enforcement violated article I, section 7 by impersonating a known associate of Mr. Bowman in text communications it sent to Mr. Bowman's cell phone.

a. Text message conversations are a private affair and governmental intrusions into this private affair are unlawful absent a warrant or exception to the warrant requirement.

The Washington Constitution commands: "No person shall be disturbed in his private affairs, or his home invaded, without authority of law." Const. art. I, § 7. Interpretation of article I, section 7 is a constitutional question reviewed de novo. State v. Samalia, 186 Wn.2d 262, 269, 375 P.3d 1082 (2016).

Under article I, section 7, there is a two-part inquiry. State v. Villela, 194 Wn.2d 451, 458, 450 P.3d 170 (2019). First, the court analyzes whether the complained action intrudes on a private affair. Id. If

so, second, the court analyzes whether authority of law justified the intrusion. Id.

In Hinton, this Court recognized that one of the privacy interests protected by article I, section 7 is text messaging communications by cell phone. 179 Wn.2d at 865, 869-72. Text messaging is a common mode of personal communication with one's friends, family members, co-workers, and other associates. See id. at 869-70. It "is the most widely used smartphone feature." Nissen v. Pierce Cty., 183 Wn.2d 863, 884, 357 P.3d 45 (2015). It is also "a unique form of communication." Hinton, 179 Wn.2d at 873. Unlike a mailed letter, it is instantaneous. Id. at 873. And since just about everyone has a cell phone and most keep the device within arms reach at almost all times, the message is likely to be quickly read. See Riley v. California, 573 U.S. 373, 385, 395, 134 S. Ct. 2473, 189 L. Ed. 2d 430 (2014) (recounting pervasiveness of cell phones in daily life). Even more so than a regular telephone, a cell phone "is a necessary component of modern life." State v. Gunwall, 106 Wn.2d 54, 67, 720 P.2d 808 (1986) (quoting People v. Sporleder, 666 P.2d 135, 141 (Colo.1983)).

In Hinton, the police seized the cell phone of Mr. Lee, who was arrested for possession of heroin. Id. A detective read a text message sent by Mr. Hinton to Mr. Lee. Id. at 866. The detective impersonated Mr. Lee and arranged a drug transaction with Mr. Hinton. Id. This Court held the

impersonation of a known associate in text messages sent by law enforcement is an intrusion upon one's private affairs. Id. at 865, 875.

In reaching this conclusion, this Court rejected the notion that a person's privacy interest in text messages vanishes once the messages are sent. Id. at 873. That the sender lacked control over the device receiving the messages did not defeat the expectation of privacy. Id. at 873-75. This was consistent with Washington's rejection of the idea, adhered to in some federal cases interpreting the Fourth Amendment, that disclosure of information to a third party defeats any privacy expectation. See State v. Muhammad, 194 Wn.2d 577, 593-96, 451 P.3d 1060 (2019) (pinging a cell phone to determine a person's location disturbed a private affair); State v. Jorden, 160 Wn.2d 121, 123, 156 P.3d 893 (2007) (viewing of motel guest registry disturbed private affair); In re Pers. Restraint of Maxfield, 133 Wn.2d 332, 340-41, 945 P.2d 196 (1997) (obtaining electricity consumption records disturbed a private affair); State v. Boland, 115 Wn.2d 571, 581, 800 P.2d 1112 (1990) (inspection of curbside trash disturbed a private affair); Gunwall, 106 Wn.2d at 68 (installation of "pen register" disturbed private affair); see also Carpenter v. United States, __ U.S. __, 138 S. Ct. 2206, 2262-63, 201 L. Ed. 2d 507 (2018) (Gorsuch, J., dissenting) (critiquing third-party doctrine and arguing that the United States Supreme Court has never offered a persuasive justification for it).

Consistent with Washington precedent, this Court reasoned that people who communicate with others via text messaging do not expect governmental intrusion even though messaging may expose information to view:

> like an individual who places his trash on the curb for routine collection by a trash collector, or one who dials telephone numbers from his home phone, or one who shares personal information with a bank or motel, one who has a conversation with a known associate through personal text messaging exposes some information but does not expect governmental intrusion.

Hinton, 179 Wn.2d at 875 (emphasis added).

The Court rejected the idea that the detective's conduct was a valid "ruse" and Mr. Hinton "assumed the risk" that police might impersonate his associates. Id. at 876-77. Mr. Hinton had been communicating with an associate, not a stranger. Id. at 876. This made the case different from other cases where defendants had disclosed information to strangers who turned out to be law enforcement. Id. at 876-77.

In short, when a person receives a text message from a known associate, like a friend or business associate, it is reasonable to expect that the government is not impersonating this associate. One should not have to engage in a tedious multistep authentication process, akin to accessing an online account, to ensure that one's private text communications, intended for a known associate, are not actually being sent to the government. This

is particularly true for text messages, which are unlike phone calls in that a person cannot hear the intended recipient's voice and detect deception. Id. at 876.

b. Law enforcement's impersonation of Mr. Bowman's known associate in text messages was an intrusion into a private affair without authority of law.

Law enforcement used text messages to impersonate Mr. Schabell, a known associate of Mr. Bowman's. While law enforcement used a different phone and number to message Mr. Bowman, the officer impersonating Mr. Schabell explained he had gotten a different phone after his old one broke. CP 94 (FF 1g). Using information from Mr. Bowman's recent text conversation with Mr. Schabell, the officer explained they had met earlier that day. CP 94 (FF 1e, g-i); Pre. Tr. Ex. 1, p.1-2. He told Mr. Bowman they should meet at the "same" 7-Eleven. CP 94 (FF 1(i)). As the Court of Appeals concluded, Mr. Bowman "reasonably believed he was texting with a known contact." 14 Wn. App. 2d at 569. Under Hinton, the officer's conduct invaded Mr. Bowman's private affairs. Id.

The prosecution reframes the issue as whether Mr. Bowman "had a constitutional right to be conversing only with the real Mike Schabell given their acquaintanceship." Pet. for Rev. at 7. That is not the issue. The issue is whether law enforcement intruded upon a private affair, i.e., text

communications between Mr. Bowman and Mr. Schabell. Under Hinton, the answer is yes because the officer sent text messages to Mr. Bowman's cell phone impersonating Mr. Schabell, Mr. Bowman's known associate. The prosecution's argument should be rejected.

When the government engages in conduct that intrudes on a private affair, it is unlawful absent "authority of law," meaning a warrant or exception to the warrant requirement. Hinton, 179 Wn.2d at 869-70. For the first time on appeal, the prosecution claimed the consent exception to the warrant requirement provided authority of law. Br. of Resp't at 11 & n.5. By failing to raise this theory in the trial court, the prosecution forfeited its consent exception theory and this Court should not consider it. Samalia, 186 Wn.2d at 279; State v. Ibarra-Cisneros, 172 Wn.2d 880, 884, 263 P.3d 591 (2011).

If considered, the prosecution has the heavy burden to prove by clear and convincing evidence an exception to the warrant requirement. State v. Russell, 180 Wn.2d 860, 867, 330 P.3d 151 (2014). The consent exception requires the prosecution to prove that "(1) the consent was voluntary, (2) the person granting consent had authority to consent, and (3) the search did not exceed the scope of the consent." State v. Monaghan, 165 Wn. App. 782, 784-85, 266 P.3d 222 (2012).

The prosecution cannot prove the consent exception because, at best, the evidence showed only that Mr. Schabell consented to law enforcement's examination of his phone. There was no evidence that Mr. Schabell consented to impersonation or to examination of future text messages meant for him. A person's consent to examine the contents of a person's cell phone is not a license to impersonate that person. Thus, the prosecution cannot prove there was a consensual invasion into Mr. Bowman's private affairs. Bowman, 14 Wn. App. 2d at 570.

The prosecution has also failed to explain why Mr. Schabell had authority to consent to the invasion of Mr. Bowman's private affairs. As the Court of Appeals reasoned, Mr. "Schabell was not a party to the subsequent text conversation between the police and [Mr.] Bowman." Id. Thus, Mr. Bowman's expectation that his text communications with Mr. Schabell would remain free from governmental intrusion was still legitimate. Hinton, 179 Wn.2d at 875. As this Court's precedents hold, that information is shared with a third party does not mean the person lacks a legitimate expectation that a private affair will stay private. Id.

Under Hinton, law enforcement intruded on Mr. Bowman's private affairs without authority of law. The Court of Appeals should be affirmed.

2. Additionally, law enforcement's conduct in sending uninvited and fraudulent text messages to Mr. Bowman's cell phone, with the purpose of learning information, constituted a trespassory invasion into Mr. Bowman's private affairs in violation of article I, section 7.

The Court of Appeals should also be affirmed on an additional ground. Under the revitalized trespass analysis adopted by the United States Supreme Court, law enforcement's sending of uninvited and fraudulent text messages to Mr. Bowman's cell phone with the purpose of learning information from him was a governmental trespass. This makes it both a "search" and an "invasion into a private affair." Because there was no warrant or exception to the warrant requirement, the invasion was without authority of law and violated article I, section 7.

a. A "search" or "invasion into a private affair" occurs if the government trespasses upon a constitutionally protected area with the purpose of learning information.

Under the Fourth Amendment,[2] a "search" occurs if the government intrudes upon a reasonable expectation of privacy. Carpenter, 138 S. Ct. at 2213. This test derives from Katz v. United States, 389 U.S. 347, 360, 88 S. Ct. 507, 19 L. Ed. 2d 576 (1967) (Harlan, J., concurring). Before Katz, the United States Supreme Court used a property-based test tied to

[2] "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized." U.S. Const. amend. IV.

common-law trespass. United States v. Jones, 565 U.S. 400, 405, 132 S. Ct. 945, 181 L. Ed. 2d 911 (2012). However, "the *Katz* reasonable-expectation-of-privacy test has been *added to,* not *substituted for,* the common-law trespassory test." Id. at 409.

Thus, irrespective of the reasonable expectations of privacy test, a search also occurs if the government trespasses upon a constitutionally protected area to obtain information. Florida v. Jardines, 569 U.S. 1, 5, 10-11, 133 S. Ct. 1409, 185 L. Ed. 2d 495 (2013) (bringing drug-sniffing dog to front door of home was a search as it intruded on protected area and its purpose was to learn whether drugs were in home); Jones, 565 U.S. at 407 n.3 (attaching GPS device to vehicle was a search as it intruded on an effect and its purpose was to learn movements of vehicle). Lower federal courts have recognized the revival of the trespass analysis as a "sea change." United States v. Richmond, 915 F.3d 352, 357 (5th Cir. 2019).

This Court has not addressed whether a trespass analysis applies under article I, section 7. The Court should hold that it does.

Under article I, section 7, an invasion into a private affair "occurs when the government disturbs 'those privacy interests which citizens of this state have held, and should be entitled to hold, safe from governmental trespass absent a warrant.'" Muhammad, 194 Wn.2d at 586 (quoting State v. Myrick, 102 Wn.2d 506, 510, 688 P.2d 151 (1984)

(emphasis added)). This test is broader than the "reasonable expectations of privacy" test under the Fourth Amendment. See Myrick, 102 Wn.2d 511. By using the word "should," it encompasses a normative judgment and ensures that new technology does not eliminate the privacy rights of our citizens. See id. But it also looks to traditional property interests "citizens of this state have held." Consistent with precedent, the test recognizes that "governmental trespass[es]" are those that infringe on the common-law rights of our citizens when our constitution was adopted. See State v. Ringer, 100 Wn.2d 686, 691, 674 P.2d 1240 (1983) (article I, section 7 incorporates the common-law right to be free of searches or seizures absent a warrant, a search by the government is a trespass unless there is authority of law).[3]

In interpreting article I, section 7, this Court has reasoned that it "'requires no less' than the Fourth Amendment." State v. Afana, 169 Wn.2d 169, 177, 233 P.3d 879 (2010) (quoting State v. Patton, 167 Wn.2d 379, 394, 219 P.3d 651 (2009)). Thus, when the United States Supreme Court narrowed the legitimate scope of a search of a vehicle incident to arrest under the Fourth Amendment,[4] this Court quickly followed suit and

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[3] This Court overruled Ringer, but only temporarily. State v. Salinas, 169 Wn. App. 210, 220, 279 P.3d 917 (2012).

[4] Arizona v. Gant, 556 U.S. 332, 343, 129 S. Ct. 1710, 173 L. Ed. 2d 485 (2009).

likewise "adjusted" its "article I, section 7 analysis for a warrantless search of a vehicle incident to arrest of a recent occupant to bring the exception into conformance with the rationale underlying the exception." State v. Snapp, 174 Wn.2d 177, 188, 275 P.3d 289 (2012). Likewise, Jones and Jardines compel an adjustment in this Court's article I, section 7 analysis and adoption of the trespass test.

b. By sending uninvited text messages to Mr. Bowman's cell phone that sought to learn whether Mr. Bowman would sell drugs, law enforcement committed a trespassory invasion into a private affair.

The trespass test is not limited to physical trespasses and includes electronic or digital trespasses. United States v. Ackerman, 831 F.3d 1292, 1307-08 (10th Cir. 2016). In Ackerman, authored by Justice Gorsuch when he was a circuit judge, the federal Court of Appeals for the 10th Circuit held the government had conducted a "search" when it opened and examined emails. This was because doing so was a "trespass to chattels"[5] and the purpose was to learn information. Id. As Ackerman recognized, "many courts have already applied the common law's ancient trespass to chattels doctrine to electronic, not just written, communications." Id. at

[5] Restatement (Second) of Torts § 217(b) (1965) ("A trespass to a chattel may be committed by intentionally . . . using or intermeddling with a chattel in the possession of another").

1308;[6] see also Jones v. United States, 168 A.3d 703, 717 n.27 (D.C. 2017) ("numerous courts have held that . . . interference with electronic resources can satisfy the elements of common-law trespass to chattels"); Hannah L. Cook, (Digital) Trespass: What's Old Is New Again, 94 Denv. L. Rev. Online 1, 5 (2017) ("Trespass law has never been confined to when a person physically intrudes on another's private property.").

For example, one federal court recognized that a person who received repeated unwanted calls to her cell phone had a viable tort claim for trespass to chattels. Mohon v. Agentra LLC, 400 F. Supp. 3d 1189, 1238-39, 1245 (D.N.M. 2019). Federal courts have also recognized that the receipt of unwanted text messages is harmful and sufficiently concrete to satisfy the injury-in-fact requirement in federal standing jurisprudence. Gadelhak v. AT&T Servs., Inc., 950 F.3d 458, 463 (7th Cir. 2020). The harm caused by unwanted text messages is akin to the harm recognized by privacy torts, such as the tort of intrusion upon seclusion.[7] Id. at 462; Van Patten v. Vertical Fitness Grp., 847 F.3d 1037, 1043 (9th Cir. 2017); Melito v. Experian Mktg. Sols., 923 F.3d 85, 93 (2d Cir. 2019). And this

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[6] Citing eBay, Inc. v. Bidder's Edge, Inc., 100 F. Supp. 2d 1058, 1063, 1069-70 (N.D. Cal. 2000); CompuServe Inc. v. Cyber Promotions, Inc., 962 F. Supp. 1015, 1019, 1027 (S.D. Ohio 1997); Thrifty-Tel, Inc. v. Bezenek, 46 Cal. App. 4th 1559, 1565-67, 54 Cal. Rptr. 2d 468, 472 (1996).

[7] Restatement (Second) of Torts § 652B (1977).

Court has recognized the harm posed by deceptive spam emails. State v. Heckel, 143 Wn.2d 824, 833-36, 24 P.3d 404 (2001).

In this case, law enforcement engaged in a trespassory invasion by sending uninvited text messages impersonating Mr. Schabell to Mr. Bowman's cell phone. The text messages placed data onto his phone, sapped its power resources, and presumably summoned Mr. Bowman's attention by causing his phone to light up, vibrate, or play a ringtone. Because the purpose was to learn information from Mr. Bowman, i.e., whether he would sell drugs, this was a search.

That the trespass was arguably relatively minor does not matter. See Silverman v. United States, 365 U.S. 505, 512, 81 S. Ct. 679, 5 L. Ed. 2d 734 (1961) ("mildest and least repulsive" trespass is still a search). Placing a GPS device on a car, held to be a trespassory search in Jones, is also relatively minor. Lower federal courts have concluded similarly minor trespasses to be "searches." United States v. Dixon, 984 F.3d 814, 820-21 (9th Cir. 2020) (insertion of key obtained from defendant into a locked car to learn if key would open car)); Taylor v. City of Saginaw, 922 F.3d 328, 332-33 (6th Cir. 2019) (use of chalk to mark tires of parked car to learn later if car had not moved); Richmond, 915 F.3d at 356-59 (officer's tapping of tire in attempt to learn if contraband was inside). Likewise, a trespassory search occurred here. See State v. Riley, 121 Wn.2d 22, 36,

846 P.2d 1365 (1993) (defendant committed "computer trespass" by using a computer that made use of the resources of another computer).

Law enforcement's conduct in impersonating a person via text message (not unlike the practice of "catfishing"[8]) would have been likely tortious and possibly criminal if done by a private party. Washington recognizes common-law privacy torts, including intrusion upon seclusion. Youker v. Douglas Cty., 178 Wn. App. 793, 797, 327 P.3d 1243 (2014). Beyond the common law, the legislature has forbidden persons conducting business in Washington from sending electronic commercial text messages to the cell phones of Washington residents. RCW 19.190.060(1). The legislature has created a civil action for electronic impersonation. RCW 4.24.790. Impersonation may be a criminal act. RCW 9A.60.40, .45. "Computer trespass" is also a crime. RCW 9A.90.050, .060.

This is significant because positive law (i.e., a statute) may inform whether there is an intrusion upon a private affair, a reasonable expectation of privacy, or a trespass. See Carpenter, 138 S. Ct. at 2268-72 (Gorsuch, J. dissenting) (discussing that positive laws may bear on Fourth

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[8] See https://en.wikipedia.org/wiki/Catfishing ("Catfishing is a deceptive activity where a person creates a fictional persona or fake identity on a social networking service, usually targeting a specific victim.") (last accessed February 5, 2021).

Amendment analysis). Indeed, the fourth Gunwall factor, which examines "preexisting state law," recognizes this:

> Previously established bodies of state law, including statutory law, may also bear on the granting of distinctive state constitutional rights. State law may be responsive to concerns of its citizens long before they are addressed by analogous constitutional claims. Preexisting law can thus help to define the scope of a constitutional right later established.

Gunwall, 106 Wn.2d at 61-62.

While law enforcement can of course investigate crimes, they must abide by custom. For example, in Jardines, the Court held law enforcement committed a trespassory invasion by bringing a drug-sniffing dog to the area around a home. 569 U.S. at 11-12. While law enforcement had an implied license to walk to the door and knock, they had no customary invitation to bring a trained police dog to the area in the hopes of finding incriminating evidence. Id. at 8-9. "[T]he background social norms that invite a visitor to the front door do not invite him there to conduct a search." Id. at 9.

Similarly, while people invite others to contact them via their cell phone, there is no customary invitation for strangers to impersonate others when doing so. Like the trespass in Jardines, law enforcement committed a trespass to chattels by sending uninvited text messages to Mr. Bowman's cell phone. Because the texts sought to gain information from Mr.

Bowman through the impersonation of his known associate, this was a trespassory search and invasion into Mr. Bowman's private affairs. Because law enforcement lacked a warrant and no exception to the warrant requirement applied, article I, section 7 was violated. The Court of Appeals should be affirmed on this additional ground.

E. CONCLUSION

This Court should affirm the Court of Appeals because under Hinton, law enforcement violated article I, section 7 by intruding upon Mr. Bowman's private conversation without authority of law. Additionally, this Court should affirm because the text messages sent to Mr. Bowman's phone were a trespassory invasion into a private affair.[9]

Respectfully submitted this 5th day of February, 2021.

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[9] Concerning the issues related to legal financial obligations, Mr. Bowman rests on his previous briefing and the Court of Appeals' decision. Bowman, 14 Wn. App. 2d at 570 n.3, citing State v. Dillon, 12 Wn. App. 2d 133, 152, 456 P.3d 1199 (2020). He briefly notes that the trial court stated it was waiving all non-mandatory fees. RP 433. Thus, the imposition of supervision fees, buried in a condition of community custody in the judgment and sentence, was scrivener's error. Dillon, 12 Wn. App. 2d at 152.

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,	)	
	)	
Petitioner,	)	
	)	NO. 99062-0
v.	)	
	)	
REECE BOWMAN,	)	
	)	
Respondent.	)	

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SIGNED IN SEATTLE, WASHINGTON THIS 5TH DAY OF FEBRUARY, 2021.

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