

NO. 93794-0

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Appellant,

v.

WILLIAM PHILLIP, JR.,

Respondent.

ANSWER TO CROSS-PETITION

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A. IDENTITY OF ANSWERING PARTY

The answering party, the State of Washington, seeks the relief designated in Part 2.

B. STATEMENT OF RELIEF SOUGHT

The State respectfully asks that this Court deny review of Phillip's challenge to the constitutionality of the independent source doctrine as applied in this state's courts.

C. FACTS PERTAINING TO ANSWER

The State has filed a petition for review in the instant matter, asking this Court to evaluate the decision by Division One of the Court of Appeals to reverse William Phillip's conviction on the ground that an affidavit for a search warrant for business records maintained by a cell phone service provider did not provide probable cause for the warrant's issuance. The warrant at issue was sought by police investigators after the assigned deputy prosecutor, in preparation for Phillip's upcoming trial, became concerned about the sufficiency of an earlier affidavit used to obtain a warrant for the same records shortly after the discovery of the body of Phillip's victim. The affidavit for the second, prophylactic warrant contained significant information known by detectives prior

to their request for the first warrant, but mistakenly omitted from their initial affidavit.

The Court of Appeals properly recognized that the independent source rule applied to this situation, citing to this Court's decision in State v. Gaines, 154 Wn.2d 711, 116 P.3d 993 (2005). The appellate court nevertheless concluded that the second affidavit, while more extensive than the original submission that had been deemed sufficient by the Honorable Brian Gain of the King County Superior Court, was still insufficient to justify a grant of authority to obtain a third party's business records relating to Phillip. As mentioned supra, it is this decision that the State has asked this Court to review.

In one section of his answer to the State's petition for review, Phillip asks, this Court to deem the independent source rule unconstitutional under article 1, section 7, of the state constitution. Phillip contends, in essence, that any impropriety in a police investigation taints all of the investigators' subsequent activity, and that the only permissible judicial response in such circumstances is suppression of any subsequently-obtained evidence. Phillip's Answer to Petition and Cross-Petition, at 14-18.

D. ARGUMENT

Phillip has never raised or briefed the above-described argument prior to his latest submission. Any challenge to a long, much-relied-upon, and well established doctrine such as the independent source rule¹ should be ruled upon only after the full measure of argument-and-response briefing provided for under the Rules of Appellate Procedure at the Court of Appeals, rather than in the restricted context of *supplemental* briefing to this Court.

Compare RAP 10.1 et seq. with RAP 13.7(e).

Phillip has had plentiful opportunity to raise his contention as to the legitimacy of the independent source rule throughout the history of this case, but has elected to wait until now to present the bare outline of such a claim in his cross-petition. The State respectfully asks this Court to decline to countenance such a tactic, given the gravity of the matter.

E. CONCLUSION

For the foregoing reasons, the State asks this Court to grant its petition for review and decline “review” of a state constitutional claim that Phillip raises for the first time ever in his cross-petition.

¹ See, e.g., Gaines, 154 Wn.2d at 716-22; State v. Coates, 107 Wn.2d 882, 735 P.2d 64 (1987); State v. Miles, 159 Wn. App. 282, 244 P.3d 1030 (2011).

DATED this 19th day of December, 2016.

RESPECTFULLY submitted,

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Certificate of Service by Electronic Mail

Today I directed electronic mail addressed to the attorney for the appellant, Nancy Collins, containing a copy of the Answer to Cross-Petition, in State v. William Phillip, Jr., Cause No. 72120-8-1, in the Court of Appeals, Division I, for the State of Washington.

I certify under penalty of perjury of the laws of the State of Washington that the foregoing is true and correct.

LuBrame

Name
Done in Seattle, Washington

12/19/16
Date

KING COUNTY PROSECUTOR'S OFFICE - APPELLATE UNIT

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Answer to Cross-Petition

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