

**FILED**  
**Court of Appeals**  
**Division III**  
**State of Washington**  
**8/30/2019 12:37 PM**

THE COURT OF APPEALS  
OF THE STATE OF WASHINGTON  
(DIVISION III)

---

No. 362680  
Superior Court # 181002242; 181501317

---

CITY OF RICHLAND, CITY OF PASCO

Respondents,

v.

DEAN STENBERG, JASON SHERGUR

Appellants.

---

ON APPEAL FROM THE SUPERIOR COURTS OF THE STATE OF  
WASHINGTON FOR BENTON COUNTY AND FRANKLIN COUNTY

The Honorable Joseph Burrowes, Judge

---

BRIEF OF RESPONDENTS

---

Michael J. Rio, WSBA #31981  
Pasco Prosecuting Attorney  
Richland Prosecuting Attorney  
Attorney for Respondents

410 N. Neel St., Suite A  
Kennewick, Washington 99336  
(509) 628-4700  
Fax: (509) 628-4742

TABLE OF CONTENTS

I. STATEMENT OF ISSUES ..... 1

II. ARGUMENT ..... 1

    A. The Implied Consent Statute Does Not Preclude a Blood Test  
    Via Search Warrant Where Evidence of Impairment can be  
    Obtained Through a Breath Test. .... 1

    B. The Drawing of Blood was Reasonable Pursuant to Both the  
    Fourth Amendment of the United States Constitution as well as  
    Article I §7 of the Washington Constitution. .... 4

III. CONCLUSION ..... 10-11

**TABLE OF AUTHORITIES**  
**TABLE OF CASES**

Barrios-Flores v. Levi, 2017 ND 117,  
894 N.W.2d 888 (2017) ..... 7

Birchfield v. North Dakota, 136 S.Ct. 2160, \_\_\_ U.S. \_\_\_, 195 L.Ed.2d 560, 84 U.S.L.W.  
4493, 26 Fla.L.Weekly Fed. S 300 (2016) .....6-10

Brigham City, Utah v. Stuart, 126 S.Ct. 1943,  
547 U.S. 398, 164 L.Ed.2d 650 (2006) ..... 8

California v. Acevedo, 500 U.S. 565,  
111 S.Ct. 1982, 114 L.Ed.2d 619 ..... 9

City of Seattle v. St. John, 166 Wn.2d 941,  
215 P.3d 194 (2009) .....3-4, 10

Ex Parte United States, 287 U.S. 241,  
53 S. Ct. 129, 77 L. Ed. 382 (1932) ..... 4

Katz v. United States, 389 U.S. 347,  
88 S.Ct. 507, 19 L.Ed.2d 576 (1967) ..... 8

Missouri v. McNeely, 133 S.Ct. 1552,  
569 U.S. 141, 161, 185 L.Ed.2d 696 (2013) ..... 3

Riley v. California, 573 U.S. 373,  
134 S.Ct. 2473, 189 L.Ed.2d 430 (2014) .....8-9

Skinner v. Railway Labor Executives' Assn.,  
489 U.S. 602, 109 S.Ct. 1402, 103 L.Ed.2d 639 (1989) ..... 5

Schmerber v. California, 384 U.S. 757,  
86 S.Ct. 1826, 16 L.Ed.2d 908 (1966) .....5-6

State v. Baird, 187 Wn.2d 210, 386 P.3d 239 (2016) ..... 9

State v. Bullock, 71 Wn.2d 886, 431 P.2d 195 (1967) ..... 6

State v. Chapin, 75 Wn.App. 460, 879 P.2d 300 (1994) ..... 2

State v. Elgin, 118 Wn.2d 551, 825 P.2d 314 (1992) ..... 3

<u>State v. Garcia-Salgado</u> , 170 Wn.2d 176, 240 P.3d 153 (2010) .....	9
<u>State v. Goggin</u> , 185 Wn.App. 59, 339 P.3d 983 (2014) .....	4
<u>State v. Inman</u> , 2 Wn.App. 2d 281, 409 P.3d 1138 (2018) .....	4, 7, 10
<u>State v. Kalakosky</u> , 121 Wn.2d 525, 852 P.2d 1064 (1993) .....	6
<u>State v. Ladson</u> , 138 Wn.2d 343, 979 P.2d 833 (1999) .....	2
<u>State v. McCumber</u> , 295 Neb. 941, 893 N.W.2d 411 (2017) .....	7
<u>State v. Meacham</u> , 93 Wn.2d 735, 612 P.2d 795 (1980) .....	5
<u>State v. Nelson</u> , 7 Wn.App.2d 588, 434 P.3d 1055 (2019) .....	11
<u>State v. Romano</u> , 800 S.E.2d 644 (2017) .....	7
<u>State v. Schultz</u> , 146 Wash.2d 540, 48 P.3d 301 (2002) .....	1
<u>State v. Snapp</u> , 174 Wn.2d 177, 275 P.3d 289 (2012) .....	5
<u>State v. Timm</u> , 2016 ND 241, 888 N.W.2d 769 (2016) .....	8
<u>State v. Valdez</u> , 167 Wn.2d 761, 224 P.3d 751 (2009) .....	5
<u>State v. Vance</u> , 168 Wn.2d 754, 230 P.3d 1055 (2010) .....	4
<u>State v. Wisdom</u> , 187 Wn.App. 652, 349 P.3d 953 (2015) .....	5
<u>United States v. Chadwick</u> , 433 U.S. 1, 97 S.Ct. 2476, 53 L.Ed.2d 538 (1977) .....	9
<u>United States v. De L'isle</u> , 825 F.3d 426 (Cir. 2016) .....	8
<u>Vernonia School Dist. 47J v. Acton</u> , 515 U.S. 646, 115 S.Ct. 2386, 132 L.Ed.2d 564 (1995) .....	5
<u>Wash. Pub. Power Supply Sys. v. Gen. Elec. Co.</u> , 113 Wn.2d 288, 778 P.2d 1047 (1989) .....	3

York v. Wahkiakum Sch. Dist. No. 200,  
163 Wash.2d 297, 178 P.3d 995 (2008) ..... 5

**Rules, Statutes and Other Authority**

CrRLJ 2.3 .... 2  
RCW 46.20.308 ..... 1-4, 10  
United States Constitution amendment IV ..... 2, 8  
Washington State Constitution, Article I, Section 7 ..... 2, 5

## I. STATEMENT OF ISSUES

- A. Does Washington's Implied Consent Statute Require Evidence of Impairment to be Obtained Through a Breath Test Only?
- B. Was the Drawing of Blood Reasonable Pursuant to Both the Fourth Amendment of the United States Constitution as well as Article I §7 of the Washington State Constitution When it was Authorized by a Valid Search Warrant?

## II. ARGUMENT

- A. The Implied Consent Statute Does Not Preclude a Blood Test Via a Search Warrant Where Evidence of Impairment Can be Obtained Through a Breath Test.

On Appeal, the appellate court reviews issues of statutory meaning de novo.<sup>1</sup> The issuance of a search warrant by a court is commonly recognized as the appropriate process for seizure of evidence and is expressly consistent with the terms of the implied consent statute. RCW 46.20.308(4) provides, irrespective of the other language in the implied consent statute, that an officer may seek a search warrant for a person's breath or blood.<sup>2</sup> Both the federal

---

<sup>1</sup> State v. Schultz, 146 Wash.2d 540, 544, 48 P.3d 301 (2002).

<sup>2</sup> RCW 46.20.308(4): "Nothing in subsection (1), (2), or (3) of this section precludes a law enforcement officer from obtaining a person's blood to test for alcohol, marijuana, or any drug, pursuant to a search warrant, a valid waiver of the warrant requirement, when exigent circumstances exist, or under any other authority of law. Any blood drawn for the purpose of determining the person's alcohol, marijuana levels, or any drug, is drawn pursuant to this section when the officer has reasonable grounds to believe that the person is in physical control or driving a vehicle under the influence or in violation of RCW 46.61.503."

constitution and our state's constitution authorize seizure of evidence upon authority of law.<sup>3</sup> CrRLJ 2.3 codifies the procedure for issuance of a search warrant. The rule outlines with particularity the standard for issuance of any warrant and the procedural process which must be followed to obtain and document any warrant. Where the defendant is searched pursuant to a facially valid warrant, the defendant has the burden to challenge and establish invalidity.<sup>4</sup>

Appellants cite RCW 46.20.308(3)<sup>5</sup> for the proposition that all testing for the determination of impairment in DUI related matters must be conducted through the breath testing process. However, such a reading ignores RCW 46.20.308(4) which reads: "Nothing in subsection (1), (2), or (3) of this section precludes a law enforcement officer from obtaining a person's blood to test for *alcohol*, marijuana, or any drug, pursuant to a search warrant, a valid waiver of the warrant requirement, when exigent circumstances exist, or under any other authority of law."*(emphasis added)*. RCW 46.20.308(4) is an exception to the language in RCW 46.20.308(3); thus, it is clear that when a blood draw is conducted pursuant to a search warrant, as is allowed in section four, the language that the test shall be administered by breath only does not apply.

---

<sup>3</sup> Washington State Constitution, Article I, Section 7; U.S. Const. amend. IV.

<sup>4</sup> State v. Chapin, 75 Wn.App. 460, 469-70, 879 P.2d 300 (1994), *overruled on other grounds by State v. Ladson*, 138 Wn.2d 343, 979 P.2d 833 (1999).

<sup>5</sup> Brief of Appellants at page 5. The brief cites RCW 4620.508, but no such citation exists. It is the city's belief that the citation was a scrivener's error and the correct citation is 46.20.308.

When a court interprets a statute, it must give effect to the legislature's intent.<sup>6</sup> It is clear that the legislature's intent in enacting RCW 46.20.308(4) was to allow for the collection of evidence of impairment from a person's blood pursuant to a search warrant. In Missouri v. McNeely, the United States Supreme Court noted that "... a majority of states either place significant restrictions on when police officers may obtain a blood sample despite a suspect's refusal (often limiting testing to cases involving an accident resulting in death or serious bodily injury) or prohibit nonconsensual blood tests altogether."<sup>7</sup> "Among these States, several lift restrictions on nonconsensual blood testing if law enforcement officers first obtain a search warrant or similar court order."<sup>8</sup> The McNeely Court noted that pursuant to RCW 46.20.308(1) nonconsensual blood testing is authorized by statute when law enforcement officers first obtain a search warrant.<sup>9</sup>

The issue of the implied consent statute precluding a blood draw via a search warrant has also been addressed by the Washington State Supreme Court in City of Seattle v. St. John.<sup>10</sup> In St. John the Court held, in reviewing RCW 46.20.308, that "... the legislative intent is plain on the face of the statute

---

<sup>6</sup> State v. Elgin, 118 Wn.2d 551, 555, 825 P.2d 314 (1992) (citing Wash. Pub. Power Supply Sys. v. Gen. Elec. Co., 113 Wn.2d 288, 292, 778 P.2d 1047 (1989)).

<sup>7</sup> Missouri v. McNeely, 133 S.Ct. 1552, 569 U.S. 141, 161, 185 L.Ed.2d 696 (2013).

<sup>8</sup> Missouri v. McNeely, 569 U.S. 141, 161-162.

<sup>9</sup> Missouri v. McNeely, 133 S.Ct. 1552, 569 U.S. 141, 185 L.Ed.2d 696 (2013). (See footnote 10.)

<sup>10</sup> City of Seattle v. St. John, 166 Wn.2d 941, 215 P.3d 194 (2009).

that an officer may obtain a blood alcohol test pursuant to a warrant regardless of the implied consent statute.”<sup>11</sup> The Washington State Supreme Court went on to state that “[t]he legislature made its intention regarding blood alcohol tests pursuant to a warrant quite clear: ‘*Neither consent nor this section precludes a police officer from obtaining a search warrant for a person’s breath or blood.*’ RCW 46.20.308(1) (emphasis added).”<sup>12</sup> In State v. Inman, Division II of the Court of Appeals wrote: “... [t]he implied consent statute applies to blood alcohol tests conducted under only the implied consent statute and has no effect on blood tests conducted pursuant to other authority.”<sup>13</sup> Additionally, once probable cause has been established, the judge reviewing the search warrant application does not have the authority to deny the request.<sup>14</sup>

B. The Drawing of Blood was Reasonable Pursuant to Both the Fourth Amendment of the United States Constitution as Well as Article I §7 of the Washington State Constitution.

The standard of review for constitutional issues is de novo review.<sup>15</sup>

The United States Supreme Court has held that “reasonableness generally

---

<sup>11</sup> St. John, at 946.

<sup>12</sup> State v. Goggin, 185 Wn.App. 59, 69, 339 P.3d 983 (2014). “Our conclusion is supported by City of Seattle v. St. John, 166 Wn.2d 941, 946, 215 P.3d 194 (2009), in which the Washington Supreme Court held that the plain language of RCW 46.20.308 (1) allows officers to ‘*obtain a search warrant for blood alcohol tests regardless of the implied consent statute.*’ (Emphasis added.)”

<sup>13</sup> State v. Inman, 2 Wn.App. 2d 281, 293, 409 P.3d 1138 (2018). (quoting City of Seattle v. St. John at pages 946-947.)

<sup>14</sup> See e.g. Ex Parte United States, 287 U.S. 241, 53 S. Ct. 129, 77 L. Ed. 382 (1932).

<sup>15</sup> State v. Vance, 168 Wn.2d 754, 759, 230 P.3d 1055 (2010).

requires the obtaining of a judicial warrant.”<sup>16</sup> Article I, section 7 of the Washington State constitution provides that “[n]o person shall be disturbed in his private affairs, or his home invaded, without authority of law.” “Article I, section 7, unlike the Fourth Amendment, is not grounded in notions of reasonableness.”<sup>17</sup> “Rather, it prohibits any disturbance of an individual's private affairs without authority of law.”<sup>18</sup> The Washington State Supreme Court has held that “[t]he ‘authority of law’ required by article I, section 7 is satisfied by a valid warrant.”<sup>19</sup>

“... [T]he Fourth Amendment's proper function is to constrain, not against all intrusions as such, but against intrusions which are not justified in the circumstances, or which are made in an improper manner.”<sup>20</sup> “For example, in Schmerber, a blood sample was taken over the objections of a criminal defendant.”<sup>21</sup> “Because of the state's interest in deterring driving while under the influence of alcohol and the relatively inoffensive nature of a properly conducted blood test, the taking of the defendant's blood in a hospital setting was not deemed to be an unreasonable search.”<sup>22</sup> “Schmerber ...

---

<sup>16</sup> Vernonia School Dist. 47J v. Acton, 515 U.S. 646, 653, 115 S.Ct. 2386, 132 L.Ed.2d 564 (1995). (quoting Skinner v. Railway Labor Executives' Assn., 489 U.S. 602, 619, 109 S.Ct. 1402, 103 L.Ed.2d 639 (1989)).

<sup>17</sup> State v. Wisdom, 187 Wn.App. 652, 668, 349 P.3d 953 (2015). (quoting State v. Snapp, 174 Wn.2d 177, 194, 275 P.3d 289 (2012)).

<sup>18</sup> State v. Valdez, 167 Wn.2d 761, 773, 224 P.3d 751 (2009).

<sup>19</sup> York v. Wahkiakum Sch. Dist. No. 200, 163 Wash.2d 297, 306, 178 P.3d 995 (2008).

<sup>20</sup> Schmerber v. California, 384 U.S. 757, 768, 86 S.Ct. 1826, 16 L.Ed.2d 908 (1966).

<sup>21</sup> State v. Meacham, 93 Wn.2d 735, 739, 612 P.2d 795 (1980).

<sup>22</sup> Meacham at 739.

settled the proposition that it is reasonable, within the terms of the Fourth Amendment, to conduct otherwise permissible searches for the purpose of obtaining evidence which would aid in apprehending and convicting criminals.”<sup>23</sup> In doing so, “[t]he court in Schmerber explained that: the taking of blood is common place, the quantity taken is minimal and the procedure involves virtually no risk, trauma or pain ... .”<sup>24</sup> Thus, the taking of blood pursuant to a valid search warrant is inherently reasonable.

Appellants also argue that pursuant to Birchfield v. North Dakota, the reasonableness of any blood draw “must be judged in light of the less intrusive alternative of a breath test.”<sup>25</sup> However, when taken in context, the Birchfield opinion supports the Respondent Cities’ position in the present matter. The United States Supreme Court in Birchfield determined that there was no requirement for a warrant with regards to breath tests.<sup>26</sup> This was so because the breath test fell within the search incident to arrest exception to the warrant requirement.<sup>27</sup>

---

<sup>23</sup> State v. Bullock, 71 Wn.2d 886, 890 431 P.2d 195 (1967).

<sup>24</sup> State v. Kalakosky, 121 Wn.2d 525, 533-534, 852 P.2d 1064 (1993).

<sup>25</sup> Birchfield v. North Dakota, 136 S.Ct. 2160, 2184, \_\_\_ U.S. \_\_\_, 195 L.Ed.2d 560, 84 U.S.L.W. 4493, 26 Fla.L.Weekly Fed. S 300 (2016).

<sup>26</sup> “Having assessed the effect of BAC tests on privacy interests and the need for such tests, we conclude that the Fourth Amendment permits warrantless breath tests incident to arrests for drunk driving.” *Id.* at 2184.

<sup>27</sup> Id.

However, the Court held that there was a warrant requirement with regard to blood testing for DUI.<sup>28</sup> “We reach a different conclusion with respect to blood tests. Blood tests are significantly more intrusive, and their reasonableness must be judged in light of the availability of the less invasive alternative of a breath test. Respondents have offered no satisfactory justification for demanding the more intrusive alternative *without a warrant*.”<sup>29</sup> The plain meaning of the Birchfield Court’s holding above, is that the reasonableness of obtaining a blood test, without a warrant, must be judged in light of the availability of the less invasive breath test.

Appellants cite Birchfield for the proposition that because “blood tests are more intrusive than breath tests and the reasonableness of a blood test must be judged in light of the less intrusive alternative of a breath test.”<sup>30</sup> The

---

<sup>28</sup> Birchfield at 2178. See also State v. Inman at page 295. (“In Birchfield, the United States Supreme Court held that a warrantless blood draw cannot be justified under the search incident to arrest exception to the warrant requirement.”)

<sup>29</sup> Birchfield at 2184. (*emphasis added*)

<sup>30</sup> *But See* State v. McCumber, 295 Neb. 941, 893 N.W.2d 411 (2017): The Supreme Court of Nebraska found, “[u]ltimately, in Birchfield, the Court concluded that a breath test and a blood test had differing compelling interests under the Fourth Amendment. As a result, law enforcement officials do not need a warrant to conduct a breath test pursuant to a search incident to a lawful arrest for drunk driving, but a warrant is required for a blood test.”; Barrios-Flores v. Levi, 2017 ND 117, 894 N.W.2d 888 (2017): The North Dakota Supreme Court determined, “In Birchfield v. North Dakota, ... the United States Supreme Court consolidated three implied-consent cases ‘to decide whether motorists lawfully arrested for drunk driving may be convicted of a crime or otherwise penalized for refusing to take a warrantless test measuring the alcohol in their bloodstream.’”; State v. Romano, 800 S.E.2d 644 (2017): The North Carolina Supreme Court determined that “[t]he specific issue in Birchfield was ‘whether motorists lawfully arrested for drunk driving may be convicted of a crime or otherwise penalized for refusing to take a warrantless test measuring the alcohol in their bloodstream.’ 579 U.S. at \_\_\_, 136 S.Ct. at 2172. The [United States] Supreme Court concluded that ‘the Fourth Amendment permits warrantless breath tests incident to arrest for drunk driving’ but does not permit warrantless blood tests incident to arrest for drunk

Fourth Amendment gives people the right “to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures.”<sup>31</sup> “[T]he ultimate touchstone of the Fourth Amendment is ‘reasonableness.’”<sup>32</sup> “A search is reasonable if the officer had a valid search warrant or if the search fits within a specific warrant exception.”<sup>33</sup> Justice Sotomayor writing a concurring opinion in Birchfield noted, “[b]ecause securing a search warrant before a search is the rule of reasonableness, the warrant requirement is ‘subject only to a few specifically established and well-delineated exceptions.’”<sup>34</sup> The issuance of a search warrant provides two very important procedural safeguards to a criminal defendant. “First, they [search warrants] ensure that a search is not carried out unless a neutral magistrate makes an independent determination that there is probable cause to believe that evidence

---

driving. *Id.* at \_\_\_, 136 S.Ct. at 2184. Additionally, the [United States] Supreme Court concluded ‘that motorists cannot be deemed to have consented to submit to a blood test [by virtue of an implied-consent statute] on pain of committing a criminal offense.’ *Id.* at \_\_\_, 136 S.Ct. at 2186.’; State v. Timm, 2016 ND 241, 888 N.W.2d 769 (2016): The North Dakota Supreme Court, quoting Birchfield determined that “[t]he [United States] Supreme Court held the Fourth Amendment permits warrantless breath tests incident to a lawful arrest for drunk driving, but does not permit warrantless blood tests incident to a lawful arrest for drunk driving. 136 S.Ct. at 2184-85. The [United States] Supreme Court concluded that in Birchfield’s prosecution for refusing a warrantless blood test incident to his arrest, the refused blood test was not justified as a search incident to his arrest and reversed his conviction because he was threatened with an unlawful search. *Id.* at 2186.”

<sup>31</sup> U.S. Const. amend. IV.

<sup>32</sup> Riley v. California, 573 U.S. 373, 134 S.Ct. 2473, 2482, 189 L.Ed.2d 430 (2014). (quoting Brigham City v. Stuart, 547 U.S. 398, 403, 126 S.Ct. 1943, 164 L.Ed.2d 650 (2006)), cert. denied, Riley v. California, 136 S.Ct. 506, 193 L.Ed.2d 401 (2015).

<sup>33</sup> United States v. De L'isle, 825 F.3d 426 (Cir. 2016). (quoting Riley v. California at 2473.

<sup>34</sup> Birchfield at 2188. (quoting Katz v. United States, 389 U.S. 347, 357, 88 S.Ct. 507, 19 L.Ed.2d 576 (1967)).

will be found.”<sup>35</sup> “Second, if the magistrate finds probable cause, the warrant limits the intrusion on privacy by specifying the scope of the search — that is, the area that can be searched and the items that can be sought.”<sup>36</sup>

A search of the Birchfield opinion failed to produce language requiring a reason to be given, for not first obtaining a breath test, before a neutral magistrate may authorize a blood draw via search warrant. Further, a post-arrest breath test is a search under the Fourth Amendment and under article I, section 7 of the Washington Constitution.<sup>37</sup> A post-arrest breath test requested by a law enforcement officer is a search incident to arrest and is an exception to the warrant requirement.<sup>38</sup> It would seem an absurd result to require the government to attempt a search pursuant to an exception to the warrant requirement as a prerequisite to the government being allowed to apply for a search warrant.

Birchfield, pursuant to the fourth amendment, settled the question regarding whether breath and blood tests could be obtained incident to arrest without a search warrant.<sup>39</sup> The Birchfield court was not asked to decide the propriety of obtaining a search warrant for blood without first requesting a

---

<sup>35</sup> Birchfield at 2181. (citing e.g., Riley v. California, 573 U.S. 373, 134 S.Ct. 2473, 189 L.Ed.2d 430 (2014).

<sup>36</sup> *Id.* (citing United States v. Chadwick, 433 U.S. 1, 9, 97 S.Ct. 2476, 53 L.Ed.2d 538 (1977), abrogated on other grounds, California v. Acevedo, 500 U.S. 565, 111 S.Ct. 1982, 114 L.Ed.2d 619.)

<sup>37</sup> State v. Garcia-Salgado, 170 Wn.2d 176, 184, 240 P.3d 153 (2010).

<sup>38</sup> State v. Baird, 187 Wn.2d 210, 222, 386 P.3d 239 (2016) (plurality opinion).

<sup>39</sup> Birchfield at 2184.

breath test.<sup>40</sup> Because the issue decided in Birchfield was different than the issue decided in City of Seattle v. St. John, Birchfield cannot be said to have reversed or overturned St. John. Rather, the Court in Birchfield affirmed the notion that “[n]othing prevents the police from seeking a warrant for a blood test when there is sufficient time to do so in the particular circumstances or from relying on the exigent circumstances exception to the warrant requirement when there is not.”<sup>41</sup> This holding supports the ruling in St. John which approved officers requesting a search warrant regardless of the implied consent statute. RCW 46.20.308(4) provides that authority. Presently, it is uncontested that blood was drawn here pursuant to a valid search warrant. As such, the acquisition of said blood, via the valid search warrant, and the evidence of impairment it contained should be upheld.

## CONCLUSION

Neither the validity of either search warrant nor the facts found by the trial courts have been challenged on appeal. During the year and six months the Baird case was pending before the Washington State Supreme Court, there was uncertainty concerning whether a breath test was a search requiring a

---

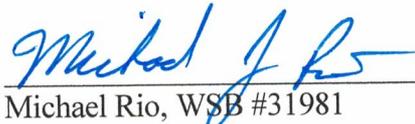
<sup>40</sup> State v. Inman at 295. “In Birchfield, the United States Supreme Court held that a warrantless blood draw cannot be justified under the search incident to arrest exception to the warrant requirement.” (quoting Birchfield 136 S.Ct. at 2178.);

<sup>41</sup> Birchfield at 2184.

search warrant under the Washington State Constitution.<sup>42</sup> During that time, the Cities of Pasco and Richland obtained judicially authorized search warrants to obtain blood evidence in DUI and Physical Control cases. Doing so was reasonable because each search warrant was issued by a neutral magistrate and provided admissible evidence of intoxication. For these reasons, it is requested that this Honorable Court affirm the decision of the lower courts and remand this case for sentencing.

DATED THIS 30<sup>th</sup> day of August, 2019.

Respectfully submitted,



Michael Rio, WSB #31981  
Pasco City Prosecutor  
Richland City Prosecutor  
Attorney for the Respondents

---

<sup>42</sup> See generally State v. Nelson, 434 P.3d 1055, 1061 (2019) at footnote 4.

IN THE COURT OF APPEALS OF THE  
STATE OF WASHINGTON DIVISION III

CITY OF PASCO,

Respondent,

v.

JASON SHERGUR,

Appellant.

No. 36268-0-III

Affidavit of Service

Respondents' Brief

CITY OF RICHLAND,

Respondent,

v.

DEAN STENBURG,

Appellant.

I, Niki Jackson, declare under the penalty of perjury of the laws of the State of Washington that I emailed a copy of Respondents' Brief to Appellants' attorney Gary Metro at garymetrolawfirm@gmail.com and garymetro@outlook.com.

August 30, 2019

Kennewick, Washington.



Niki Jackson  
Legal Assistant

Bell Brown and Rio PLLC  
410 N. Neel Street, Suite A  
Kennewick, Washington 99336

**BELL BROWN RIO PLLC**

**August 30, 2019 - 12:37 PM**

**Transmittal Information**

**Filed with Court:** Court of Appeals Division III  
**Appellate Court Case Number:** 36268-0  
**Appellate Court Case Title:** City of Richland v. Dean Stenberg  
**Superior Court Case Number:** 18-1-00224-2

**The following documents have been uploaded:**

- 362680\_Briefs\_20190830123405D3346862\_5186.pdf  
This File Contains:  
Briefs - Respondents  
*The Original File Name was Stenberg Shergur Response Brief 36268-0.pdf*

**A copy of the uploaded files will be sent to:**

- garymetro@outlook.com
- garymetrolawfirm@gmail.com

**Comments:**

---

Sender Name: Niki Jackson - Email: niki@bellbrownrio.com

**Filing on Behalf of:** Michael J Rio - Email: michael@bellbrownrio.com (Alternate Email: )

Address:  
410 N. Neel Street  
Suite A  
Kennewick, WA, 99336  
Phone: (509) 628-4700

**Note: The Filing Id is 20190830123405D3346862**