

RECEIVED
SUPREME COURT
STATE OF WASHINGTON
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No. 91642-0

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RECEIVED BY E-MAIL

SUPREME COURT OF THE STATE OF WASHINGTON

CORTNEY L. BLOMSTROM,
BROOKE M. BUTTON,
CHRISTOPHER V. COOPER,

Petitioners,

v.

HONORABLE GREGORY TRIPP
IN HIS OFFICIAL CAPACITY AS SPOKANE COUNT
DISTRICT COURT JUDGE, AND THE SPOKANE COUNTY DISTRICT COURT,

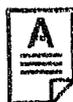
Respondents.

MOTION FOR DISCRETIONARY REVIEW
(RAP 2.3(d))

From the Spokane County District Court
Hon. Gregory Tripp, Judge

Karen S. Lindholdt, WSBA #24103
Spokane County Public Defender's Office
1033 West Gardner
Spokane, WA 99260-0280
(509) 477-4246

Attorney for Petitioners



ORIGINAL

FILED AS
ATTACHMENT TO EMAIL

A. IDENTITY OF PETITIONERS

Petitioners, Cortney L. Blomstrom, Brooke M. Button and Christopher V. Cooper, ask this court to accept review of the decision designated in Part B of this motion.

B. DECISION

On March 31, 2015, the Honorable Judge Cozza of the Spokane County Superior Court, issued a Memorandum Opinion and Order denying Petitioners' Writ of Review stemming from pretrial conditions of release imposed on Driving Under the Influence (DUI) cases pending before the Spokane County District Court. The decision refused to consider Petitioners' Writ of Review based upon the Court's conclusion that the Petitioners' Writ was barred on constitutional grounds. A copy of the Memorandum Opinion and Order is in the Appendix at page 1-4.

C. ISSUES PRESENTED FOR REVIEW

1. Whether the Superior Court erred in denying the Writ of Review based upon its Finding that Petitioner's challenge is barred from consideration by writ, and instead must be undertaken by a RALJ appeal.

2. Whether the Superior Court erred in denying Petitioners' Writ and thus denying Petitioners' claims that the Spokane County District Court acted unlawfully by imposing pretrial testing requirements on Petitioners who have no prior DUI criminal history. The pretrial testing resulted in an unreasonable and warrantless search under the Fourth Amendment to the United States Constitution and Article I, Section 7 of the Washington Constitution.

3. Whether the Superior Court erred in denying Petitioners' Writ and thus denying

Petitioners' claims that the Spokane County District Court acted unlawfully by imposing pretrial testing and/or Ignition Interlock Device requirements, pursuant to RCW 10.21.055, for Petitioner who had a prior conviction for an drinking and driving offense. These testing requirements amount to an unreasonable and warrantless search under the Fourth Amendment to the United States Constitution and Article 1, Section 7 of the Washington Constitution.

D. STATEMENT OF THE CASE

In February and March of 2015, Petitioners were charged with Driving While Under the Influence (DUI) in the Spokane County District Court. At their First Appearance hearing, the Petitioners were all released upon conditions that included either a requirement for ETG/THC (i.e., alcohol and marijuana) testing between four (4) to eight (8) times monthly, or the Ignition Interlock Device (IID).

Petitioner Cortney Blomstrom was charged with Driving Under the Influence and the District Court found probable cause and set release conditions on February 2, 2015. Although Ms. Blomstrom had *no prior criminal history*, the court ordered her to subject herself to random twice monthly testing. Appendix at page 5-6.

Petitioner Brooke Button was charged with Driving Under the Influence and the District Court found probable cause and set release conditions on February 28, 2015. Ms. Button had a prior conviction for a Reckless Driving (DUI reduction), and thus the court ordered her to install an Ignition Interlock Device on all of her vehicles. Appendix 7-8.

Petitioner Christopher Cooper was charged with Driving Under the Influence and the District Court found probable cause and set release conditions on February 9, 2015. In spite of

the fact that Mr. Cooper had no prior alcohol driving related offenses, the court ordered Mr. Cooper to subject himself to four (4) times random monthly testing. Appendix at page 9-10.

Petitioners filed Writs of Review with the Spokane County Superior Court in February and March of 2015. The Honorable Judge Cozza consolidated the thirty cases filed, and held a hearing on all of the cases on March 20, 2015. On March 31, 2015, issued a Memorandum of Opinion and Order denying Petitioners' Writ of Review and concluded that Petitioners' challenge was barred from consideration by writ as the challenge could only be undertaken by a RALJ appeal. Appendix, page 4. (Memorandum of Opinion and Order, p. 4).

On April 30, 2015, Petitioners filed their Notice of Discretionary Review to the Supreme Court.

E. ARGUMENT WHY REVIEW SHOULD BE ACCEPTED

Pursuant to RAP 2.3, this Court should accept review because the issues raised by Petitioners here involve constitutional violations and issues of public importance. Specifically, the practice of imposing pretrial testing conditions is being repeated daily across the State of Washington and unquestionably has an impact on innumerable Washington citizens. Not only does the testing amount to a warrantless search, but it also imposes a financial burden on the individuals who must pay for this testing.

Absent review by this Court, Petitioners have no adequate remedy at law through a RALJ process. In the Memorandum of Opinion and Order, the Superior Court cited *Commanda v. Cary*, 143 Wn.2d 651, 23 P.3d 1086 (2001), in support of its conclusion that Petitioners have an adequate remedy through the RALJ process. The Superior Court failed to recognize that City

of *Seattle v. Holifield*, 170 Wn.2d 230, 244-246, 240 P.3d 1162 (2010), overruled *Cary v. Commanda* on the relevant review standards for discretionary writs.

F. CONCLUSION

For the reasons stated above, Petitioners request that this Court accept Discretionary Review and issue Orders (1) immediately reinstate the Writs of Review that were wrongfully dismissed, and (2) requiring the Spokane County Superior Court to grant relief requested by Petitioners, including a finding that the pretrial testing and IID requirements imposed by the Spokane County District Court resulted in an unreasonable warrantless search under the Fourth Amendment to the United States Constitution and Article 1, Section 7 of the Washington Constitution.

October 1, 2015.

Respectfully submitted,



Karen S. Lindholdt, WSBA #24103
Attorney for Petitioners

APPENDIX

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FILED

MAR 31 2015

SPOKANE COUNTY CLERK

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF SPOKANE

In Re Writ of Review Petitions of	)	Nos.
ANTHONY C. BERNAL	)	15-2-00561-2 ✓
CORTNEY C. BLOMSTROM	)	15-2-00725-9
JAMIE C. BURDICK	)	15-2-00460-8
BROOKE M. BUTTON	)	15-2-00828-0
CHRISTOPHER V. COOPER	)	15-2-00674-1
LINDA M. DENNIS	)	15-2-00683-0
STEFANIE I. ESSARY	)	15-2-00804-2
SVETLANA V. GERMANOVITCH	)	15-2-00827-1
RICHARD E. GETCHELL III	)	15-2-00805-1
RANDY A. HARKEY	)	15-2-00676-7
ROBERT O. HEPPER	)	15-2-00781-0
CANDY A. HERRERA	)	15-2-00724-1
DALLAS N. HOY	)	15-2-00560-4
KIM A. ISBELLE	)	15-2-00780-1
JUSTIN T. JOHNSON	)	15-2-00673-2
DONALD C. MARSENGILL	)	15-2-00803-4
STEVEN D. TROUP	)	15-2-00672-4

MEMORANDUM OPINION AND ORDER

1.) Background

Petitioners come before this court on Petitions for Writ of Review stemming from cases before the Spokane County District Court. All of these Petitioners are charged with Driving Under the Influence (DUI). Pretrial conditions were established by District Court Judges in these cases wherein some of the Petitioners are required to submit to monitoring to enforce a condition to abstain from alcohol or controlled substances; some of the Petitioners are required to install Alcohol Interlock Devices on their vehicles, and some are required to do both.

1

Judge Salvatore F. Cozza
Spokane County Superior Court Dept. 6
1116 West Broadway Ave.
Spokane, WA 99260

Petitioners have filed petitions and obtained stays of the proceedings in District Court which are consolidated herein.

2.) *Legal Analysis*

All Petitioners in these cases assert that the pretrial conditions imposed by the District Court in these cases violate CrRLJ 3.2, the Fourth Amendment of the U.S. Constitution and Article I, Section 7 of the Washington Constitution.

Before this court can reach any of the substantive issues in these cases, a determination must be made as to whether these issues are properly before the court under RCW 7.16.040, which governs Writs of Review:

A writ of review shall be granted by any court, except a municipal or district court, when an inferior tribunal, board or officer, exercising judicial functions, has exceeded the jurisdiction of such tribunal, board or officer, or one acting illegally, or to correct any erroneous or void proceeding, or a proceeding not according to the course of the common law, and there is no appeal, nor in the judgment of the court, any plain, speedy and adequate remedy at law.¹

Prior to 1976, extraordinary writs were a common method by which to obtain interlocutory review of trial court decisions. This use of extraordinary writs was greatly curtailed by the adoption of the Rules of Appellate Procedure (RAP) in 1976. RAP 2.1(b). However, since the RAP did not provide for interlocutory appeal or review of decisions of the District and Municipal Courts, the use of extraordinary writs to Superior Court still had a significant role. RALJ 1.1(c).

The leading case interpreting the use of extraordinary writs to obtain Superior Court review of interlocutory or pretrial decisions from a Limited Jurisdiction Court is instructive here. *Commanda v. Cary*, 143 Wn. 2d 651, 23 P. 3d 1086 (2001). In *Commanda*, defendants in two DUI cases in Spokane Municipal Court wanted to challenge the penalty scheme *pretrial* for DUI penalties based on differing levels of breath alcohol concentration which were specified by statute. These penalties were challenged on equal protection grounds under the federal and Washington Constitutions. The Supreme Court quashed the writs of review on statutory grounds under RCW 7.16.040.

¹ Unlike some other recent writ cases, the State specifically raises an objection on jurisdictional grounds.

1 On the first prong (excess of jurisdiction/acting illegally) the Court said (at 656):

2 The threshold question for a discretionary writ is not whether the district court committed
 3 error of law, but whether the court had jurisdiction to decide the motion. (citation omitted)
 4 If the court has subject matter jurisdiction, a merely erroneous ruling is not an act in
 5 excess of the court's jurisdiction, and therefore no writ lies. *Id.* The court's exercise of
 6 discretion is not reviewable by extraordinary writ. *Id.* The defendants distinguish *Epler*
 7 "because it involved a superior court's discretionary ruling on a CrRLJ 8.3(b) (dismissal
 8 in furtherance of justice) motion. . . . At issue here is not a discretionary decision, rather
 9 the issue goes to the elements of and punishment for the crime with which respondents
 10 are charged." *Br. of Resp'ts* at 5-6. Defendants' claim that any issue "which goes to the
 11 elements of and punishment for the crime" charged may be raised by a statutory writ is
 12 unsupported by authority. Moreover, such a holding would broaden the scope of the
 13 statutory writ so as to be generally available rather than to be an extraordinary remedy
 14 as consistently held. *Odegaard*, 55 Wn. App. at 687; *Williams*, 101 Wn.2d at 455.

15 On the second prong (adequate remedy at law), the Court was unmoved by the argument that
 16 traditional appeals take time to pursue (*Commanda* at 656-657):

17 Defendants also claim that a writ should lie due to the limited number of district court
 18 judges available to hear such motions. "[T]he writ of review process is the most
 19 expeditious way of handling such a legal challenge." *Br. of Resp'ts* at 3. Although the
 20 writ may be convenient, no authority supports its use as a matter of expediency.

21 [7, 8] A writ is proper only when there is not any "plain, speedy and adequate remedy in
 22 the ordinary course of law." RCW 7.16.300. "The fact that an appeal will not lie directly
 23 from an interlocutory order is not a sufficient basis for a writ of review if there is an
 24 adequate remedy by appeal from the final judgment." *Epler*, 93 Wn. App. at 525. "Under
 25 the RALJ [Rules for Appeal of Decisions of the Courts of Limited Jurisdiction], an
 26 interlocutory order is reviewable on appeal from the ultimate judgment." *Id.*

27 In an Issaquah district court case, defendant Alter was charged with DUI and petitioned
 28 for a writ pursuant to chapter 7.16 RCW. *Alter v. Issaquah Dist. Court*, 35 Wn. App. 590,
 591, 668 P.2d 609, review denied, 100 Wn.2d 1030 (1983). Division One found that
 when a defendant "has not even been convicted, much less exercised her right of appeal
 to the superior court for any conviction entered," the defendant has "an adequate
 remedy by appeal under the Rules for Appeal of Decisions of Courts of Limited
 Jurisdiction, [and] the writ of certiorari was properly denied." *Alter*, 35 Wn. App. at 591.
 Moreover, the court stated that "[i]n this posture, the case is frivolous and would be
 subject to dismissal." *Id.* (citing RAP 18.9(c)).

29 *Commanda* and *Bendickson* "agree that they have a right to a RALJ appeal from a
 conviction." *Br. of Resp'ts* at 4. However, they argue that "[a] remedy by RALJ appeal is
 inadequate because respondents would have to go through unnecessary trials." *Id.* In
 essence, defendants have conceded there is an adequate remedy at law after the final
 judgment. In spite of this concession, they argue "there is no appeal, nor any plain,

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speedy and adequate remedy at law." CP at 2. However, this argument is without any supporting authority.

Once the defendants have been convicted of or have pleaded guilty to the charges, they have an adequate remedy at law through a RALJ appeal.

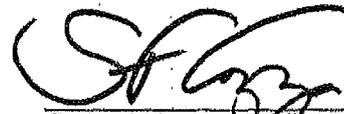
It is noteworthy that in *Commanda* the petitioners were making a challenge on constitutional grounds, as do the petitioner here. Not even the relative importance of a constitutional issue was sufficient to persuade the Supreme Court to allow a pretrial challenge to proceed by way of an extraordinary writ.

This court therefore is persuaded that the petitioners' challenge is barred from consideration by writ. As in *Commanda*, the challenge can only be undertaken by a RALJ appeal if they are convicted or plead guilty to the charges.

3.) *Conclusion and Order*

For the reasons stated herein, the Stays in these cases is dissolved and the cases are remanded to Spokane County District Court for proceedings consistent with this decision.

Dated this 31st day of March, 2015



Judge Salvatore F. Cozza

Judge Salvatore F. Cozza
Spokane County Superior Court Dept. 6
1116 West Broadway Ave.
Spokane, WA 99260

ADT

STATE OF WASHINGTON - SPOKANE COUNTY DISTRICT COURT

STATE OF WASHINGTON,
Plaintiff,

vs.
BLOMSTROM, CORTNEY LYNN
Defendant.

Case No.
5Z0020697
1. DUI

FILED

FEB 02 2015

SPOKANE COUNTY DISTRICT COURT

Report No(s).

ORDER: ON PROBABLE CAUSE,
SETTING RELEASE CONDITIONS,
COURT DATE &/OR COMMITMENT

PROBABLE CAUSE: The Court finds:

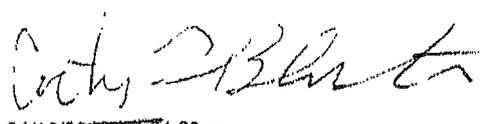
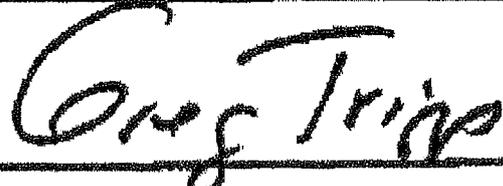
- Probable cause exists to believe the accused committed the offense(s) charged. CrRLJ 3.2.1(e)(2)
- Not Guilty Plea entered: 2/2/15

CONDITIONS OF RELEASE: after finding probable cause, reviewing the case file, examining defendant's criminal and warrant history, the court orders the defendant to comply with conditions ordered below:

- Jail/Geiger to RELEASE Defendant on OWN RECOGNIZANCE.
- Must not commit any further criminal law violations.
- Must not use, possess, or consume alcohol or drugs including marijuana except as prescribed for the defendant by a physician.
- Within 24 hours defendant must report to: Absolute Drug Testing, 523 S Division, Spokane WA. 99202, 509.747.8855
For: EHM GPS Alcohol Monitor Bracelet UA ETG/THC Home Alcohol Monitoring
Frequency: (random 2 twice monthly testing)
CLERK ACTION: fax to Monitoring Agency. Agency to confirm/deny compliance by e-mail to DCProbationEMtesting@SpokaneCounty.org
- Must not drive motor vehicle after/while using, consuming, possessing or under the influence of drugs or alcohol.
- Must not operate motor vehicle without valid driver's license, insurance & ignition interlock device (if ordered).
- Timely appear for all court dates scheduled for defendant

COURT DATE: DEFENDANT MUST APPEAR for: Pre Trial Hearing on Mar. 4, 2015 at 9:00 am
before JUDGE Gregory Tripp in Courtroom 4. [Public Safety Bldg. Floor 2]

DEFENDANT MAY BE ARRESTED AND / OR HAVE BOND OR RELEASE REVOKED IF DEFENDANT VIOLATES RELEASE CONDITIONS OR FAILS TO APPEAR FOR COURT DATE.

<p style="text-align: right;">Defendant</p>  <p>04/02/2015 11:06 am</p> <p>Defendant's Signature</p>	 <p>Judge Gregory Tripp</p>
---	---

Address on file: (Defendant states is: correct <input checked="" type="checkbox"/> incorrect <input type="checkbox"/> 915 E QUEEN AVE SPOKANE WA 99207-3363 HomePh: 509-263-9921 WorkPh: Work# CellPh: ____-____-____	DATED in Spokane County, WA on <u>February 2, 2015 3:43 PM</u>
Corrected address:	

District Court complies with Americans with Disability Act requirements - for accommodations contact Court Operations Manager 477-2903 (Rev. 10/11)

2013

FILED

MAR 02 2015

SPOKANE COUNTY
DISTRICT COURT

SPOKANE COUNTY DISTRICT COURT STATE OF WASHINGTON

STATE OF WASHINGTON	Plaintiff	Case Number: 520312786 Report Number: 15-067133 Charges: 46.61.502G
vs.		
BUTTON, BROOKE M WF 04-16-1981	Defendant	COURT'S ORDER: ON PROBABLE CAUSE SETTING RELEASE CONDITIONS, & SETTING NEXT HEARING DATE Defendant must appear for Next Hearing: March 02, 2015 at 9:00 AM at .

PROBABLE CAUSE

The Court finds:

- Probable cause exists to believe the accused committed the offense(s) charged.
CrR/CrRLJ 3.2.1(e)(2)

CONDITIONS OF RELEASE

After finding probable cause, reviewing the information presented, examining Defendant's criminal and warrant history, the court orders the defendant to comply with conditions ordered below:

- Jail will RELEASE Defendant on OWN RECOGNIZANCE.
- The Defendant must not commit any further criminal law violations.
- The Defendant must not use, possess, or consume alcohol or drugs except as prescribed for the Defendant by a physician.
- The Defendant must not drive motor vehicle after/while using, consuming, possessing or under the influence of drugs or alcohol.
- The Defendant must not operate motor vehicle without valid driver's license, insurance & ignition interlock device (if previously ordered by Department of Licensing).
- The current offense and a prior qualified offense involve alcohol
 - Defendant MUST install Ignition Interlock Device on ALL vehicles operated by him/her

AND PROOF of installation must be filed within 5 days of the date of release

with the District Court through its Probation Department

Smart Start - spokane24-7@smartstartinc.com

CLERK ACTION: Email order to Monitoring Agency.

Agency to confirm/deny compliance by e-mail to DCProbationIID24-7monitoring@SpokaneCounty.org

The Defendant must timely appear for all court dates scheduled for Defendant.

DEFENDANT MAY BE ARRESTED AND / OR HAVE BOND OR RELEASE REVOKED IF DEFENDANT VIOLATES RELEASE CONDITIONS OR FAILS TO APPEAR FOR COURT DATE.

Aimee Maurer

Signed on 2/28/2015 1:57 PM in Spokane County,

Judge Aimee Maurer

I acknowledge receipt of a copy of this order:

Ronald P. [Signature]
Defendant's Signature (in custody)

513022 AVA [Signature] SPOKANE WA 99216
Address City State Zip

I am a certified or registered interpreter or found by the court to be qualified to interpret in the _____ language, which the defendant understands. I translated this order for the defendant from English into that language.

Signed at (city) Spokane, (state) WA, on (date) _____

Interpreter: _____ print name: _____

STATE OF WASHINGTON - SPOKANE COUNTY DISTRICT COURT

ADT

STATE OF WASHINGTON,

Plaintiff,

Case No.

5Z0066463

1. DUI

FILED

FEB 09 2015

vs.

Report No(s).

SPOKANE COUNTY DISTRICT COURT

COOPER, CHRISTOPHER VERNON

Defendant.

ORDER: ON PROBABLE CAUSE,
SETTING RELEASE CONDITIONS,
COURT DATE &/OR COMMITMENT

PROBABLE CAUSE: The Court finds:

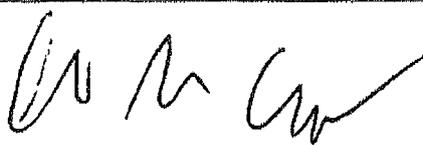
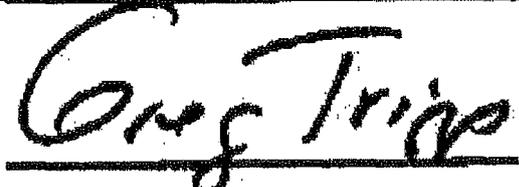
- Probable cause exists to believe the accused committed the offense(s) charged. CrRLJ 3.2.1(e)(2)
- Not Guilty Plea entered: 2/9/15

CONDITIONS OF RELEASE: after finding probable cause, reviewing the case file, examining defendant's criminal and warrant history, the court orders the defendant to comply with conditions ordered below:

- Jail/Geiger to RELEASE Defendant on OWN RECOGNIZANCE.
- Must not commit any further criminal law violations.
- Must not use, possess, or consume alcohol or drugs including marijuana except as prescribed for the defendant by a physician.
- Within 24 hours defendant must report to: Absolute Drug Testing, 523 S Division, Spokane WA. 99202, 509.747.8855
For: EHM GPS Alcohol Monitor Bracelet UA ETG/THC Home Alcohol Monitoring
Frequency: (four times random monthly testing)
CLERK ACTION: fax to Monitoring Agency. Agency to confirm/deny compliance by e-mail to DCProbationEMtesting@SpokaneCounty.org
- Must not drive motor vehicle after/while using, consuming, possessing or under the influence of drugs or alcohol.
- Must not operate motor vehicle without valid driver's license, insurance & ignition interlock device (if ordered).
- Timely appear for all court dates scheduled for defendant

COURT DATE: DEFENDANT MUST APPEAR for: Pre Trial Hearing on Mar. 17, 2015 at 1:30 pm
before JUDGE Gregory Tripp in Courtroom 4. [Public Safety Bldg. Floor 2]

DEFENDANT MAY BE ARRESTED AND / OR HAVE BOND OR RELEASE REVOKED IF DEFENDANT VIOLATES RELEASE CONDITIONS OR FAILS TO APPEAR FOR COURT DATE.

 Defendant	 Judge Gregory Tripp
Defendant's Signature	

Address on file: (Defendant states is: correct <input checked="" type="checkbox"/> incorrect <input type="checkbox"/> 3407 S SUNDOWN DR SPOKANE VALLEY WA 99206-9510 HomePh: 509-230-4610 WorkPh: Work# CellPh: ____-____-____	DATED in Spokane County, WA on <u>February 9, 2015 3:30 PM</u>
Corrected address:	

District Court complies with Americans with Disability Act requirements - for accommodations contact Court Operations Manager 477-2903 (Rev. 10/11)

SUPREME COURT OF THE STATE OF WASHINGTON

CORTNEY L. BLOMSTROM,)
BROOKE M. BUTTON,)
CHRISTOPHER V. COOPER,) No. 91642-0
)
Petitioners,)
)
vs.)
)
HONORABLE GREGORY TRIPP)
in his official capacity as Spokane County)
District Court Judge, and the Spokane)
County District Court,)
)
Respondents.)
)

CERTIFICATE OF SERVICE

I, KAREN S. LINDHOLDT , under penalty of perjury of the laws of the State of Washington, hereby certifies and declare that the following is true and correct:

That on this 1st day of October, 2015, I caused to be hand-delivered the Motion for Discretionary Review (with Appendix) to the Prosecuting Attorney's Office of Spokane County for the Respondent.

DATED at Spokane, Washington on this 1st day of October, 2015.


Karen S. Lindholdt

OFFICE RECEPTIONIST, CLERK

To: Lindholdt, Karen S.; Sterett, Rachel; O'Brien, Brian
Subject: RE: Blomstrom, et al., Case #91642-0, Motion for Discretionary Review

Received on 10-01-2015

Supreme Court Clerk's Office

Please note that any pleading filed as an attachment to e-mail will be treated as the original. Therefore, if a filing is by e-mail attachment, it is not necessary to mail to the court the original of the document.

From: Lindholdt, Karen S. [mailto:KLINDHOLDT@spokanecounty.org]
Sent: Thursday, October 01, 2015 3:25 PM
To: OFFICE RECEPTIONIST, CLERK <SUPREME@COURTS.WA.GOV>; Sterett, Rachel <RSterett@spokanecounty.org>; O'Brien, Brian <BOBRIEN@spokanecounty.org>
Subject: Blomstrom, et al., Case #91642-0, Motion for Discretionary Review

To whom it may concern:

Attached for filing please find Petitioners' Motion for Discretionary Review.

Thank you for your attention to this matter.

Best,