

("We do not address that argument in this opinion."). Thus, Martines has not yet received the benefit of appellate review on the question, so this Court should either reach the issue or vacate the Court of Appeals decision and remand for consideration of this single issue.

Second, Martines says that "the State ... conceded that the drug testing of Mr. Martines's blood was not supported by probable cause." Answer, at 5-16 (citing BOR, at p. 10.). This is not correct. In the Brief of Respondent at page ten, the only passage arguably relevant to Martines's assertion reads as follows: "Martines contends that the results of blood testing must be suppressed because the affidavit did not contain probable cause to believe that Martines's blood contained drugs in addition to alcohol, and because the search warrant did not authorize the testing of his blood at all. But no such specific probable cause or authorization was necessary." Br. of Respondent at 10. It should be apparent that this is not a concession.

Moreover, this lack of probable cause argument is weak and would not ordinarily meet the criteria of RAP 13.4(b). Officers clearly had probable cause to believe that Martines was driving

while intoxicated, the law prohibits driving while under the influence of either alcohol or drugs, so police clearly have a basis to test for either alcohol or drug impairment. Martines has not cited a single case that supports his argument for special drug-related probable cause, and there is no conflict between the trial court's ruling and other appellate decisions.

Because Martines has not received appellate review of the single search issue he preserved in the trial court, the issue must be decided, either by this Court or by the Court of Appeals.

Submitted this 19th day of November, 2014.

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Certificate of Service by Electronic Mail

Today I directed electronic mail addressed to Oliver Davis, the attorney for the respondent, at Oliver@washapp.org, containing a copy of the Petitioner's Reply to Cross-Petition, in State v. Jose Figueroa Martines, Cause No. 90926-1, in the Supreme Court, 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.

Dated this 19th day of November, 2014.

W Brame

Name:

Done in Seattle, Washington