

FILED
SUPREME COURT
STATE OF WASHINGTON
11/20/2019 2:08 PM
BY SUSAN L. CARLSON
CLERK

IN THE SUPREME COURT FOR THE STATE OF WASHINGTON

STATE OF WASHINGTON,)	
)	
Petitioner,)	NO. 97616-3
)	
vs.)	REPLY TO CROSS-
)	PETITION
WILLIAM L PHILLIP, JR.,)	
)	
Respondent.)	
)	
)	
)	
)	
)	

The State filed a petition for review raising four errors in the decision by the Court of Appeals: 1) it erred in holding that a warrant is the exclusive means of obtaining judicial authorization for constitutionally-protected records; 2) it erred by holding that a judicial authorization to search must expressly articulate – in not just the affidavit but also in the authorization – the factual basis for believing evidence of the crime will be found in the place searched; 3) it erred by concluding that trial court had applied less than a

REPLY TO CROSS-PETITION

constitutional standard to the question at hand; and 4) it erred in holding that prosecutors should not have told the judge what the tower records revealed. These erroneous holdings will likely impede the State's ability to litigate this case on remand unless the holdings are corrected.

Phillip has filed an answer to the State's petition and has also cross-petitioned, asking this court to review the decision by the Court of Appeals on whether or how the independent source doctrine applies in this case. That cross-petition should be rejected.

No part of the Court of Appeals decision touches on the independent source issue, even though that issue was – ostensibly – the reason the Court of Appeals granted interlocutory review. If there is no decision below on the independent source doctrine, then there is no decision for this Court to review, so it is impossible to say that the criteria under RAP 13.4(b) have been met. And, as argued in the State's Answer to Phillip's Motion for Discretionary Review and in the substantive briefing below, the trial court's ruling on the independent source issue is unremarkable.

REPLY TO CROSS-PETITION

Phillip argues that issues regarding the independent source doctrine are “inextricably intertwined” with the issues raised in the State’s petition. This assertion is incorrect. The issues decided by the Court of Appeals are quite distinct from the independent source doctrine. In fact, the reason the Court of Appeals never reached the independent source issues is likely because those matters stand apart from the bases upon which the appellate court reversed, which are completely distinct from the highly fact-based arguments required to decide the independent source issues.

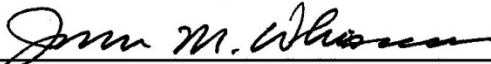
Finally, it should be noted that this Court’s recent decision in State v. Muhammed, No. 96090-9, slip op. (filed November 7, 2019, Wa. Supreme Court) (pinging a cell phone implicates privacy interests under Article I, Section 7 of the Washington Constitution), has no bearing on whether review should or shouldn’t be granted in this case. The State and the trial court assumed for purposes of this trial and this appeal that Phillip had a constitutionally-protected privacy interest in the tower records. Although the Court of Appeals opinion devoted a fair amount of attention to the privacy of cell phone records, that was not a contested issue in this appeal. Thus,

REPLY TO CROSS-PETITION

the holding in Muhammad does not alter the legal landscape for purposes of this petition or cross-petition.

DATED this 21st day of November, 2019.

DANIEL T. SATTERBERG
Prosecuting Attorney

By: 
James M. Whisman, WSBA # 19109
Senior Deputy Prosecuting Attorney
Attorneys for the Respondent
Office WSBA #91002

W554 King County Courthouse
516 Third Avenue
Seattle, WA 98104-2385
(206) 477-9497 FAX (206) 259-2795

REPLY TO CROSS-PETITION

KING COUNTY PROSECUTOR'S OFFICE - APPELLATE UNIT

November 20, 2019 - 2:08 PM

Transmittal Information

Filed with Court: Supreme Court
Appellate Court Case Number: 97616-3
Appellate Court Case Title: State of Washington v. William Phillip Jr.

The following documents have been uploaded:

- 976163_Answer_Reply_20191120140640SC736019_2662.pdf
This File Contains:
Answer/Reply - Other
The Original File Name was 97616-3 - Reply to Cross-Petition.pdf

A copy of the uploaded files will be sent to:

- Patrick.Hinds@kingcounty.gov
- Wyman.Yip@kingcounty.gov
- nancy@washapp.org
- paoappellateunitmail@kingcounty.gov
- wapofficemail@washapp.org

Comments:

Sender Name: Wynne Brame - Email: wynne.brame@kingcounty.gov

Filing on Behalf of: James Morrissey Whisman - Email: Jim.Whisman@kingcounty.gov (Alternate Email:)

Address:

King County Prosecutor's Office - Appellate Unit
W554 King County Courthouse, 516 Third Avenue
Seattle, WA, 98104
Phone: (206) 477-9497

Note: The Filing Id is 20191120140640SC736019