

E

6/7/2017 8:34 am

RECEIVED ELECTRONICALLY

bjh

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

CORTNEY L. BLOMSTROM,)	
BROOKE M. BUTTON,)	No. 91642-0
CHRISTOPHER V. COOPER,)	
)	STATEMENT OF
Petitioners,)	ADDITIONAL AUTHORITIES
)	
vs.)	
)	
The Honorable GREGORY J.)	
TRIPP, in his official capacity as)	
a Spokane County District Court)	
Judge, and the SPOKANE)	
COUNTY DISTRICT COURT,)	
)	
Respondents.)	

The petitioners, through their attorney, Michael L. Vander Giessen, respectfully request that this court consider the following additional authorities under RAP 10.8:

The petitioners submit the following additional authorities regarding an ignition interlock device's features:

- RCW 43.43.395(3)(a)(iii) ("An ignition interlock device must employ . . . [t]echnology capable of providing the global positioning coordinates at the time of each test sequence.").
- *United States v. Jones*, 565 U.S. 400, 404, 132 S. Ct. 945, 181 L. Ed. 2d 911 (2012) ("We hold that the Government's installation of

a GPS device on a target's vehicle, and its use of that device to monitor the vehicle's movements, constitutes a 'search.'").

- RCW 43.43.395(3)(a)(iii) (“[Global positioning] coordinates must be displayed within the data log that is downloaded by the manufacturer and must be made available to the state patrol to be used for circumvention and tampering investigations.”).
- RCW 43.43.395(1) (“Any officer conducting field inspections of ignition interlock devices under the ignition interlock program shall report violations by program participants to the court.”).
- RCW 43.43.395(3)(a)(ii) (“An ignition interlock device must employ . . . [t]echnology capable of taking a photo identification of the user giving the breath sample and recording on the photo the time the breath sample was given.”).
- RCW 43.43.395(3)(a)(i) (“An ignition interlock device must employ . . . [f]uel cell technology . . . consist[ing] of the following electrochemical method: An electrolyte designed to oxidize the alcohol and release electrons to be collected by an active electrode; a current flow is generated within the electrode proportional to the amount of alcohol oxidized on the fuel cell surface; and the electrical current is measured and reported as breath alcohol concentration.”).

Blomstrom v. Tripp, No. 91642-0

The petitioners submit the following additional authorities regarding the 24/7 sobriety program:

- RCW 36.28A.350 (providing a trial court may condition pretrial release upon a DUI defendant's participation in the 24/7 sobriety program and payment of associated costs and expenses).
- RCW 36.28A.390(1) (providing a law enforcement officer with probable cause to believe a pretrial releasee violated the terms of the 24/7 sobriety program may book him or her into jail and hold him or her without bond until the next judicial day).
- RCW 36.28A.390(2) (providing that, if a pretrial releasee does not pay the costs and expenses associated with the 24/7 sobriety program, the trial court must give him or her a written warning for the first violation and a minimum of one day's imprisonment for the second violation, three days' imprisonment for the third violation, five days' imprisonment for the fourth violation, and seven days' imprisonment for the fifth or subsequent violation).

The petitioners submit the following additional authorities regarding whether the district court acted illegally in declining to follow *State v. Rose*, 146 Wn. App. 439, 191 P.3d 83 (2008), and *United States v. Scott*, 450 F.3d 863 (9th Cir. 2006):

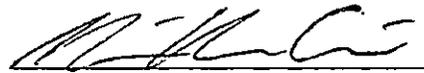
- Mark DeForrest, *In the Groove or in a Rut? Resolving Conflicts Between the Divisions of the Washington State Court of Appeals at the Trial Court Level*, 48 Gonz. L. Rev. 455, 488 & n.271 (2013) (“Decisions of a division of the [state] court of appeals are binding on all state trial courts,” thus, “the decisions of a foreign division bind a trial court in a different division.” (citing *Marley v. Dep’t of Labor & Indus.*, 72 Wn. App. 326, 330, 864 P.2d 960 (1993))).
- “The doctrine [of stare decisis] requires a clear showing that an established rule is incorrect and harmful before it is abandoned.” *In re Stranger Creek*, 77 Wn.2d 649, 653, 466 P.2d 508 (1970).
- *Yniguez v. Arizona*, 939 F.2d 727, 736 (9th Cir. 1991) (“Despite the authorities that take the view that the state courts are free to ignore decisions of the lower federal courts on federal questions, we have serious doubts as to the wisdom of this view. Having chosen to create the lower federal courts, Congress may have intended that just as state courts have the final word on questions of state law, the federal courts ought to have the final word on questions of federal law.”), *vacated on other grounds, Arizonans for Official English v. Arizona*, 520 U.S. 43, 117 S. Ct. 1055, 137 L. Ed. 2d 170 (1997).

Blomstrom v. Tripp, No. 91642-0

- *Fretwell v. Lockhart*, 946 F.2d 571, 577 (8th Cir. 1991) (noting “state courts are bound by the Supremacy Clause to obey federal constitutional law,” such that “a reasonable state trial court” would follow federal circuit precedent on federal constitutional questions), *rev'd on other grounds*, 506 U.S. 364, 113 S. Ct. 838, 122 L. Ed. 2d 180 (1993).

DATED this 6th day of June, 2017.

Respectfully submitted,



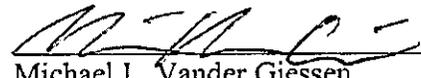
Michael L. Vander Giessen
WSBA No. 45288
Attorney for Petitioners

Declaration of Service

I, Michael L. Vander Giessen, declare under penalty of perjury under the laws of the state of Washington that on June 6, 2017, I e-mailed a copy of the foregoing Statement of Additional Authorities to:

- (1) Brian C. O'Brien, Gretchen E. Verhoef, and Samuel J. Comi on behalf of the respondents;
- (2) Pamela B. Loginsky on behalf of the Washington Association of Prosecuting Attorneys;
- (3) April S. Benson and Leah E. Harris on behalf of the State of Washington;
- (4) Ryan B. Robertson, George L. Bianchi, Jonathan D. Rands, Howard S. Stein, and Jason S. Lantz on behalf of the Washington Foundation for Criminal Justice; and
- (5) James E. Lobsenz, Nancy L. Talner, Theresa H. Wang, and Lance A. Pelletier on behalf of the American Civil Liberties Union of Washington.

Jun. 6, 2017 Spokane, Washington
Date and Place


Michael L. Vander Giessen
WSBA No. 45288
Attorney for Petitioners

OFFICE RECEPTIONIST, CLERK

From: OFFICE RECEPTIONIST, CLERK
Sent: Wednesday, June 07, 2017 8:35 AM
To: 'Vander Giessen, Michael'
Cc: O'Brien, Brian; Verhoef, Gretchen E.; Comi, Samuel J.; 'staff@thebianchilawfirm.com'; 'hstein@slsps.com'; 'ryan@robertsonlawseattle.com'; 'jrand@jonathanrands.com'; 'jason@SullivanPLL.com'; 'april.benson@atg.wa.gov'; 'LeahH1@atg.wa.gov'; 'lalseaef@atg.wa.gov'; 'lobsenz@carneylaw.com'; 'talner@aclu-wa.org'; 'thw@stokeslaw.com'; 'Lance.Pelletier@stokeslaw.com'; 'pamloginsky@waprosecutors.org'
Subject: RE: Blomstrom v. Tripp, No. 91642-0

Received 6/7/17.

Supreme Court Clerk's Office

ATTENTION COURT FILERS: The Supreme Court and the Court of Appeals now have a web portal to use for filing documents. As a result, the Supreme Court will discontinue accepting filings by e-mail effective June 30, 2017. We encourage you to register for and begin using the appellate courts web portal for all your filings as soon as possible.

Here is a link to the website where you can register to use the web portal: <https://ac.courts.wa.gov/>
A help page for the site is at: <https://ac.courts.wa.gov/index.cfm?fa=home.showPage&page=portalHelp>
Registration FAQs: <https://ac.courts.wa.gov/content/help/registrationFAQs.pdf>
Registration for and use of the web portal is free and allows you to file in any of the divisions of the Court of Appeals as well as the Supreme Court. The portal will automatically serve other parties who have an e-mail address listed for the case. In addition, you will receive an automated message confirming that your filing was received.

From: Vander Giessen, Michael [mailto:MVANDERGIESSEN@spokanecounty.org]
Sent: Tuesday, June 06, 2017 11:51 PM
To: OFFICE RECEPTIONIST, CLERK <SUPREME@COURTS.WA.GOV>
Cc: O'Brien, Brian <BOBRIEN@spokanecounty.org>; Verhoef, Gretchen E. <GVERHOEF@spokanecounty.org>; Comi, Samuel J. <SJCOMI@spokanecounty.org>; 'staff@thebianchilawfirm.com' <staff@thebianchilawfirm.com>; 'hstein@slsps.com' <hstein@slsps.com>; 'ryan@robertsonlawseattle.com' <ryan@robertsonlawseattle.com>; 'jrand@jonathanrands.com' <jrand@jonathanrands.com>; 'jason@SullivanPLL.com' <jason@SullivanPLL.com>; 'april.benson@atg.wa.gov' <april.benson@atg.wa.gov>; 'LeahH1@atg.wa.gov' <LeahH1@atg.wa.gov>; 'lalseaef@atg.wa.gov' <lalseaef@atg.wa.gov>; 'lobsenz@carneylaw.com' <lobsenz@carneylaw.com>; 'talner@aclu-wa.org' <talner@aclu-wa.org>; 'thw@stokeslaw.com' <thw@stokeslaw.com>; 'Lance.Pelletier@stokeslaw.com' <Lance.Pelletier@stokeslaw.com>; 'pamloginsky@waprosecutors.org' <pamloginsky@waprosecutors.org>
Subject: Blomstrom v. Tripp, No. 91642-0

Please accept the attached documents for filing.

Michael L. Vander Giessen
Attorney
Spokane County Public Defender's Office
1033 West Gardner Avenue
Spokane, Washington 99260
(509) 477-4845