

SUPREME COURT  
OF THE STATE OF WASHINGTON

KATHLEEN MANCINI,

Petitioner,

v.

CITY OF TACOMA,

Respondent.

No. 97583-3

PETITIONER'S  
STATEMENT OF  
ADDITIONAL  
AUTHORITIES

Petitioner Kathleen Mancini submits this statement of additional authorities in accordance with RAP 10.8.

1. Mancini offers the following authorities on the issue of whether the City of Tacoma police officers were under a tort-law duty of reasonable care, for which the City of Tacoma was answerable under the doctrine of *respondeat superior*, to Mancini to avoid creating the unreasonable risk that a military-style raid would hit the wrong door:

- Laws of 1993, ch. 449, § 4, *codified at* RCW 4.96.041(4) (prohibiting a judgment lien against a municipal police officer for a civil claim where “the officer ... was acting within the scope of his or her official duties,” and making the municipality solely liable for such a judgment).
- Laws of 1989, ch. 413, § 2, *codified at* RCW 4.92.075 (prohibiting a judgment lien against a “state officer” for a civil claim where “the officer ... was acting within the scope of his

or her official duties,” and making the state solely liable for such a judgment).

- *Babcock v. State*, 116 Wn.2d 596, 610, 618, 622, 809 P.2d 143 (1991) (holding that, for a common-law claim of “negligent investigation” for a harmful foster-care placement, an individual DSHS caseworker is entitled to only qualified, not absolute, immunity and this immunity does not extend to DSHS’s liability under *respondeat superior* because “[t]he existence of some tort liability will encourage DSHS to avoid negligent conduct and leave open the possibility that those injured by DSHS’s negligence can recover”).
- *Restatement (Second) of Torts* § 895D(3) (re-stating the law that “a public officer acting within the general scope of his authority” may be “subject to tort liability for an administrative act or omission if” the officer is not immune, does not have an applicable privilege, and was “negligent in the performance of his responsibility”).
- *Maryland v. Garrison*, 480 U.S. 79, 86, 107 S. Ct. 1013, 94 L. Ed. 2d 72 (1987) (“If the officers had known, or should have known, that the third floor contained two apartments before they entered the living quarters on the third floor, and thus had been aware of the error in the warrant, they would have been obligated to limit their search to [the correct] apartment.”).
- *Gerhart v. Barnes*, 724 Fed. Appx. 316, 322 (5th Cir. 2018), *cert. denied*, 139 S. Ct. 1239, 203 L. Ed. 2d 196 (2019) (“[A] robust consensus of persuasive authority supports the principle from *Garrison* that officers’ conduct should be ‘consistent with a reasonable effort to ascertain and identify the place intended to be searched.’”).
- *Rossi v. City of Amsterdam*, 274 A.D.2d 874, 877, 712 N.Y.S.2d 79, 82 (N.Y. App. Div. 2000) (holding that the plaintiff’s negligence claim should go to trial, notwithstanding a facially valid search warrant, because a jury question was presented on “[w]hether [the police] conduct constituted a mistake that rose to the level of incompetence,” where “the

same City police officer conducted the investigation, applied for the warrant, supplied the description of the premises and directed the raid”).

- *Dawkins v. Graham*, 50 F.3d 532, 534 (8th Cir. 1995) (holding that there was a jury question on a 42 U.S.C. § 1983 claim whether the police officers acted with objective reasonableness in executing a search warrant on the wrong house).
- *Gonzalez v. City of New York*, 2006 WL 8435010, at \*6 (E.D.N.Y. Jan. 3, 2006) (“Searches of the wrong house, and seizures of its occupants, can be unreasonable even though the officers have not *intentionally* violated the rights of those persons.”).
- *Lutheran Day Care v. Snohomish Cty.*, 119 Wn.2d 91, 100, 829 P.2d 746 (1992) (rejecting a lower court’s reliance on “a number of Court of Appeals opinions and a footnote in one opinion of this court” because “where they contain any analysis of the issue at all, have generally based their holdings on conclusory citation of authority and not on the detailed policy-oriented factual inquiry which we will later show is necessary to decide the immunity question”).

2. Mancini offers the following authorities on the issue of whether the City of Tacoma police officers were under a tort-law duty of reasonable care to Mancini to promptly halt the execution of the search warrant in that home and release her from detention when, in the exercise of reasonable care, a reasonable officer should know that the warrant mistakenly identified the home as the site of criminal activity:

- *Maryland v. Garrison*, 480 U.S. 79, 87, 107 S. Ct. 1013, 94 L. Ed. 2d 72 (1987) (construing the Fourth Amendment and noting that, “as the officers recognized, they were required to discontinue the search of respondent’s apartment as soon as they discovered that

there were two separate units on the third floor and therefore were put on notice of the risk that they might be in a unit erroneously included within the terms of the warrant”).

- *Simmons v. City of Paris, Tex.*, 378 F.3d 476, 479–80 (5th Cir. 2004) (holding that a jury question was presented on a 42 U.S.C. § 1983 claim where the plaintiffs testified that “the officers remained in the house for five to six minutes” after entering the wrong house, based on the “the clearly established constitutional rule that, when law enforcement officers are executing a search warrant and discover that they have entered the wrong residence, they should immediately terminate their search” (footnote omitted)).
- *Pray v. City of Sandusky*, 49 F.3d 1154, 1160 (6th Cir. 1995) (holding that a jury question was presented on a 42 U.S.C. § 1983 claim where the police officers raided the wrong home but “the defendants nevertheless ‘secured’ the [plaintiff’s] residence for an additional four to five minutes”).

DATED this 4th day of May 2020.

Respectfully submitted,

s/ Gary Manca

Gary Manca, WSBA #42798  
Talmadge/Fitzpatrick  
2775 Harbor Avenue SW  
Third Floor, Suite C  
Seattle, WA 98126  
(206) 574-6661

Lori S. Haskell, WSBA #15779  
7511 Greenwood Ave N Ste 314  
Seattle, WA 98103  
(206) 728-1905

Attorneys for Petitioner  
Kathleen Mancini

DECLARATION OF SERVICE

On said day below, I electronically served a true and accurate copy of the *Petitioner's Statement of Additional Authorities* in Supreme Court Cause No. 97583-3 to the following:

Jean Homan  
Gisel Castro  
Tacoma City Attorney's Office  
747 Market St., Suite 1120  
Tacoma, WA 98402

Valerie D. McOmie  
4549 NW Aspen Street  
Camas, WA 98607

Lori Haskell  
7511 Greenwood Ave N Ste 314  
Seattle, WA 98103

Daniel E. Huntington  
422 Riverside, Suite 1300  
Spokane, WA 99201

Nancy Talner  
Antoinette M. Davis  
William Block  
ACLU of Wash. Foundation  
P.O. Box 2728  
Seattle, WA 98111

J. Dino Vasquez  
Karr Tuttle Campbell  
701 Fifth Avenue, Suite 3300  
Seattle, WA 98104

Douglas R. Mitchell  
Deputy Prosecuting Attorney  
205 W. Fifth Avenue, Suite 213  
Ellensburg, WA 98926-2887

Daniel R. Hamilton  
Deputy Prosecuting Attorney  
955 Tacoma Avenue, Suite 301  
Tacoma, WA 98402

Ryan J. Lukson  
Deputy Prosecuting Attorney  
Benton County Prosecutor's Office  
7122 W. Okanogan Place, Bldg. A  
Kennewick, WA 99336-2359

Pamela B. Loginsky  
Washington Association of  
Prosecuting Attorneys  
206 10<sup>th</sup> Avenue SE  
Olympia, WA 98501

Daniel G. Lloyd  
Assistant City Attorney  
P.O. Box 1995  
Vancouver, WA 98668-1995

Original E-Filed with:  
Supreme Court  
Clerk's Office

I declare under penalty of perjury under the laws of the State of Washington and the United States that the foregoing is true and correct.

DATED: May 4, 2020 at Seattle, Washington.

/s/ Matt J. Albers  
Matt J. Albers, Paralegal  
Talmadge/Fitzpatrick

# TALMADGE/FITZPATRICK

May 04, 2020 - 9:46 AM

## Transmittal Information

**Filed with Court:** Supreme Court  
**Appellate Court Case Number:** 97583-3  
**Appellate Court Case Title:** Kathleen Mancini v. City of Tacoma, et al.

### The following documents have been uploaded:

- 975833\_State\_of\_Add\_Authorities\_20200504094417SC294527\_3130.pdf  
This File Contains:  
Statement of Additional Authorities  
*The Original File Name was Petitioner Stmt of Additional Authorities.pdf*

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

- dan.lloyd@cityofvancouver.us
- danhuntington@richter-wimberley.com
- deborah.hartsoch@cityofvancouver.us
- dhamilt@co.pierce.wa.us
- dkubicek@ci.tacoma.wa.us
- doug.mitchell@co.kittitas.wa.us
- dvasquez@karrtuttle.com
- gcastro@ci.tacoma.wa.us
- haskell@haskellforjustice.com
- hhatrup@karrtuttle.com
- jhoman@cityoftacoma.org
- lori@haskellforjustice.com
- matt@tal-fitzlaw.com
- pamloginsky@waprosecutors.org
- pcpatvecf@piercecountywa.gov
- pleadings@aclu-wa.org
- prosecuting@co.benton.wa.us
- ryan.lukson@co.benton.wa.us
- sarah@tal-fitzlaw.com
- talner@aclu-wa.org
- tdavis@aclu-wa.org
- valeriemcomie@gmail.com
- wblock@msn.com

### Comments:

Petitioner's Statement of Additional Authorities

---

Sender Name: Matt Albers - Email: matt@tal-fitzlaw.com

**Filing on Behalf of:** Gary Manca - Email: gary@tal-fitzlaw.com (Alternate Email: matt@tal-fitzlaw.com)

Address:  
2775 Harbor Avenue SW

Third Floor Ste C  
Seattle, WA, 98126  
Phone: (206) 574-6661

**Note: The Filing Id is 20200504094417SC294527**