FILED
8/17/2026
Court of Appeals
Division I
State of Washington

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

SIMONE A. BAILEY-COBB, Appellant, v. SNOHOMISH COUNTY DISTRICT COURT, THE HONORABLE JUDGE JENNIFER RANCOURT, Respondent.	No. 87585-0-I consolidated with
ANDREW P. TOOMBS, Appellant, v. SNOHOMISH COUNTY DISTRICT COURT, THE HONORABLE JUDGE JENNIFER RANCOURT, Respondent.	No. 87738-1-I DIVISION ONE PUBLISHED OPINION

SMITH, J. — The State charged Simone Bailey-Cobb and Andrew Toombs with driving under the influence and, as a condition of their pretrial release, the court required them to wear transdermal drug-monitoring patches. Bailey-Cobb and Toombs petitioned for writs of habeas corpus, challenging the imposition of the drug patch as a condition of pretrial release. The trial court denied the petitions. Bailey-Cobb and Toombs appealed, alleging the drug-monitoring patch

violated article I, section 7 of the Washington State Constitution. Additionally, Bailey-Cobb contended the trial court erred in finding she would interfere with the administration of justice, and Toombs claimed the trial court did not make the requisite findings under CrRLJ 3.2 to impose any conditions. We conclude that Bailey-Cobb and Toombs did not suffer diminished privacy interests as pretrial releasees, and the court's imposition of a drug-monitoring patch violated their rights under article I, section 7. Accordingly, we reverse and remand for the trial court to remove the drug-monitoring patch condition from Bailey-Cobb's and Toombs's pretrial release requirements.

FACTS

Background

1. Simone Bailey-Cobb

In September 2024, Snohomish County law enforcement arrested Simone Bailey-Cobb on an allegation of driving under the influence (DUI). At Bailey-Cobb's arraignment, the State did not appear, but it submitted an affidavit of probable cause and requested bail be set at $25,000 and that Bailey-Cobb adhere to several conditions, including that she wear a drug-monitoring patch.[1] Bailey-Cobb objected to the condition that she wear a drug-monitoring patch, arguing the patch violated her right to privacy under article I, section 7 of the Washington State Constitution. The court imposed the condition, stating it found the request "to be well-founded based on the significant prior criminal history

[1] A drug-monitoring patch is worn on the skin and collects sweat to test for drugs.

which involves not only violent offenses but a pattern of operating a large motor vehicle . . . while under the influence of various intoxicants."[2] The court noted Bailey-Cobb had a deferred prosecution in which she admitted to a "substantial problem" with drugs and alcohol, and this pattern of behavior "demonstrate[s] that she is a significant risk to the community."

Bailey-Cobb petitioned the court for a writ of habeas corpus, contending she was unlawfully restrained by the court's imposition of the drug-monitoring patch. The court denied Bailey-Cobb's petition, holding the drug-monitoring patch constituted a search, but authority of law under RCW 10.21.045 and CrRLJ 3.2 supported the search. Bailey-Cobb appealed.

2. Andrew Toombs

In July 2024, Snohomish County law enforcement arrested Andrew Toombs on an allegation of DUI. At Toombs's arraignment, the State requested bail be set at $5,000 and the standard DUI conditions apply.[3] The court found probable cause to set the conditions requested by the State and, on its own accord, added the condition that Toombs wear a drug-monitoring patch. The court noted that Toombs had a history of DUI violations[4] and a "substantial risk to community safety" existed. The court reasoned that the "drug patch is a lesser restrictive alternative to taking [Toombs] into custody and setting a higher bail."

---

[2] Bailey-Cobb's criminal history included 32 adult misdemeanor convictions, three felonies, and a deferred prosecution for DUI.

[3] Standard DUI conditions include, among others, not driving without a valid license, not driving without insurance, and not driving within 24 hours of consuming alcohol or impairing drugs.

[4] Toombs's criminal history included four DUI violations.

The court held a review hearing in August, where Toombs objected to the drug-monitoring patch. Toombs contended the drug-monitoring patch was not a "mandatory condition." The court disagreed, noting "[m]onitoring is required under the statute because this is a substance DUI and . . . [i]t's for the safety of our community for someone who is going to continue driving."

Toombs petitioned the court for a writ of habeas corpus, contending the drug-monitoring patch violated his right to privacy. The court denied Toombs's petition. While the court concluded the patch constituted a search, it noted the drug-monitoring patch was "not as intrusive as other methods of pre-trial drug monitoring such as urinalysis," and lawful authority (RCW 10.21.045 and CrRLJ 3.2) supported the imposition of the patch. Toombs appealed.[5]

ANALYSIS

Standard of Review

We review constitutional issues and a court's decision to deny a writ of statutory review de novo. *Blomstrom v. Tripp*, 189 Wn.2d 379, 389, 402 P.3d 831 (2017).

Balancing Test and Special Needs

The State contends RCW 10.21.045 and CrRLJ 3.2 are constitutional authorities of law that support the use of a drug-monitoring patch under a compelling interest balancing test and the special needs exception. We disagree

[5] Bailey-Cobb's and Toombs's petitions were consolidated for review.

and find that neither the compelling interest test nor the special needs exception are applicable.

Both the United States Constitution and the Washington State Constitution protect individuals against unreasonable searches and seizures. U.S. CONST. amend. IV; WASH. CONST. art. I, § 7. In some contexts, article I, section 7 provides broader protection than the Fourth Amendment, including the protection of an individual's private affairs. WASH. CONST. art. I, § 7 ("No person shall be disturbed in his private affairs, or his home invaded, without authority of law.")

When a party challenges an action, contending it violates article I, section 7, the court conducts a two-part inquiry. First, we must determine whether the alleged action "intruded upon a person's 'private affairs.' " *State v. McKinney*, 148 Wn.2d 20, 27, 60 P.3d 46 (2002). To determine whether a privacy interest exists, we "examine whether a particular expectation of privacy is one that a citizen of this state should be entitled to hold." *State v. Reeder*, 184 Wn.2d 805, 814, 365 P.3d 1243 (2015). Individuals charged but not yet convicted are presumed innocent and do not have a reduced expectation of privacy. *Blomstrom*, 189 Wn.2d at 409-10.

Washington courts "have consistently held that the nonconsensual removal of bodily fluids implicates privacy interests" and constitutes a search under article I, section 7. *State v. Olsen*, 189 Wn.2d 118, 124, 399 P.3d 1141 (2017) (urinalysis); *see also State v. Garcia-Salgado*, 170 Wn.2d 176, 184, 240 P.3d 153 (2010) (cheek swab), *State v. Curran,* 116 Wn.2d 174, 184, 804 P.2d

558 (1991), *overruled on other grounds by State v. Berlin,* 133 Wn.2d 541, 947 P.2d 700 (1997) (blood test).

If a privacy interest exists, the next question is whether relevant authority of law justifies the disturbance. *State v. Surge*, 160 Wn.2d 65, 74, 156 P.3d 208 (2007). " 'Authority of law' may be satisfied by a valid warrant, a recognized exception to the warrant requirement, a constitutional statute, or a court rule." *Blomstrom*, 189 Wn.2d at 404.

Here, the State concedes implementing a drug-monitoring patch violates appellants' right to privacy under article I, section 7, so the only question at issue is whether the disturbance is supported by authority of law. The State does not assert a valid warrant or a recognized exception to the warrant requirement exists; instead, it contends two sources provide authority of law for implementing a drug-monitoring patch: RCW 10.21.045 and CrRLJ 3.2.

RCW 10.21.045 provides that

> [a] judicial officer in a municipal, district, or superior court imposing conditions of pretrial release for a defendant accused of a misdemeanor, gross misdemeanor, or felony offense, may prohibit the defendant from possessing or consuming any intoxicating liquors or drugs not prescribed to the defendant, and require the defendant to submit to testing to determine the defendant's compliance with this condition, when the judicial officer determines that such condition is necessary to protect the public from harm.

Similarly, CrRLJ 3.2 governs conditions of pretrial release for those accused of committing a misdemeanor offense. Under CrRLJ 3.2, the court will release an individual on their personal recognizance pending trial unless:

> (1) the court determines that such recognizance will not reasonably assure the accused's appearance, when required, or

> (2) there is shown a likely danger that the accused:
>
> (i) will commit a violent crime, or
>
> (ii) will seek to intimidate or threaten a witness, victim, or court employee, or tamper with evidence or violate a civil or criminal protection order, criminal no contact order, or family law restraining order, and/or conditions of release that protect the safety of alleged victims, witnesses, and the community.

CrRLJ 3.2 also provides courts the ability to impose conditions on the accused if the court determines "there exists a substantial danger that the accused will commit a violent crime or that the accused will seek to intimidate witnesses, or otherwise interfere with the administration of justice." Former CrRLJ 3.2(d) (2024). The conditions include prohibiting the accused from "consuming any intoxicating liquors or drugs not prescribed to the accused" and "any condition other than detention to assure noninterference with the administration of justice[] and reduce danger to others or the community." Former CrRLJ 3.2(d). To determine which conditions are reasonable, the court shall consider, among others, the accused's criminal record, the nature of the charge, and the accused's past interference with the administration of justice. CrRLJ 3.2(e)(1)-(8).

While CrRLJ 3.2(d) allows the court to prohibit the accused from "consuming any intoxicating liquors or drugs" and to "impose any condition other than detention to assure noninterference with the administration of justice," the rule is not without limits. "The court may not impose onerous or unconstitutional provisions where lesser conditions are available. . . . To do so is an abuse of discretion." *Butler v. Kato*, 137 Wn. App. 515, 524, 154 P.3d 259 (2007).

1. Balancing Test

First, the State contends RCW 10.21.045 and CrRLJ 3.2 are constitutional under a compelling interest/narrow tailoring balancing test. When a warrantless, suspicionless search is conducted, the search may pass constitutional muster if the State acts with a narrowly tailored, compelling interest. *Robinson v. City of Seattle*, 102 Wn. App. 795, 817, 10 P.3d 452 (2000). A compelling interest exists where "the government's interest is sufficiently important (i.e., a 'relatively high degree of government concern') to justify the particular invasion of the constitutional right in question." *Robinson*, 102 Wn. App. at 817 (quoting *Vernonia Sch. Dist. 47J v. Acton*, 515 U.S. 646, 661, 115 S. Ct. 2386, 132 L. Ed. 2d 564 (1995)). A condition is narrowly tailored " 'when the State has selected the less drastic means for effectuating its objectives.' " *State v. Evans*, 5 Wn.3d 199, 218, 572 P.3d 1172 (2025) (internal quotation marks omitted) (quoting *Blomstrom*, 189 Wn.2d at 404 n.22).

First, we find the State's argument that the drug patch is narrowly tailored to achieve a compelling interest unsupported by precedent because the Washington State Supreme Court has declined to apply such a balancing test to pretrial releasees. In *Blomstrom*, the Court noted applying the balancing test in previous cases was appropriate because the search was conducted on probationers, who have a " 'significantly reduced expectation of privacy.' " 189 Wn.2d at 408 (quoting *Olsen*, 189 Wn.2d at 128). The Court declined to apply the test to determine if urinalysis testing of pretrial releasees was constitutional.

Blomstrom, 189 Wn.2d at 410. More recently, in *Evans*, the Supreme Court affirmed that it had not applied the balancing test to "defendants charged but not yet convicted." 5 Wn.3d at 216.[6] Here, Bailey-Cobb and Toombs have not been convicted, and they do not have a reduced expectation of privacy. Accordingly, precedence does not support the State's application of the balancing test to justify a warrantless search. But, even if we were to apply the balancing test to Bailey-Cobb and Toombs, the drug-monitoring patch is not narrowly tailored to effectuate the State's interest of public safety.

"Public safety is clearly a compelling interest that justifies intrusion on the autonomy branch of privacy under article I, section 7." *Robinson*, 102 Wn. App. at 823. In *Olsen*, the Supreme Court noted the substantial public safety risk that intoxicated drivers pose: "fatalities in crashes involving alcohol-impaired drivers continue to represent almost one-third (31 percent) of the total motor vehicle fatalities in the United States." 189 Wn.2d at 129. But even when a compelling interest exists, the means to effectuate that goal must be narrowly tailored. *Olsen*, 189 Wn.2d at 130. In *Olsen*, the court held random urinalysis testing of DUI probationers did not implicate privacy interests because the testing was "narrowly tailored and imposed to monitor compliance with a valid probation

---

[6] Despite making this determination, the court still applied the *Olsen* balancing test to determine whether pretrial releasees could be subjected to the administrative booking process. *Evans*, 5 Wn.3d at 217. Emphasizing that pretrial releasees "do not suffer any 'diminution of their privacy rights,' " the *Evans* Court held the administrative booking process for pretrial releasees was not narrowly tailored and did not survive the *Olsen* balancing test. 5 Wn.3d at 213 (quoting *State v. Winterstein*, 167 Wn.2d 620, 634, 220 P.3d 1226 (2009)).

condition." 189 Wn.2d at 135. Similarly, in *State v. Nelson*, the court held urinalysis testing as a community custody condition was narrowly tailored because "the testing [was] limited in scope and only allowed to check for compliance, not as a fishing expedition." 4 Wn.3d 482, 509, 565 P.3d 906 (2025).

Here, the State contends that even though Bailey-Cobb and Toombs have not been convicted (like the individuals in *Olsen* and *Nelson*), the reasoning is still applicable for imposing a drug-monitoring patch. But, in *Olsen*, the court noted that, while urinalysis testing could potentially reveal a variety of private facts about a person, the "judgment and sentence here explicitly authorizes random [urinalysis] only to 'ensure compliance with conditions regarding the consumption of alcohol and controlled substances.' " 189 Wn.2d at 132-33 (quoting record). The court went on to state that probationers "should not necessarily expect a broader-ranging intrusion[] that expose[s] large amounts of private information completely unrelated to the underlying offense." *Olsen*, 189 Wn.2d at 133. This is not the case for Bailey-Cobb and Toombs: Even before submitting to the drug-monitoring patch, Bailey-Cobb and Toombs would have to disclose a myriad of personal information, including social security number, employment status, and medical records to the Triton Group, a third-party entity that monitors the drug-monitoring patch program.

The State also maintains the drug-monitoring patch is less intrusive than urinalysis testing. But, while Bailey-Cobb and Toombs would not need to submit

a urine sample, they would be submitting far more personal information with the patch than urinalysis testing. And once affixed to the body, the patch collects and retains evidence of any and all drugs ingested, regardless of whether it is prescribed or otherwise not prohibited, and the individual wearing the patch is required to go into Triton's office every 10 to14 days to get a new patch. Additionally, the patch does not test for alcohol, which is one of the substances the court order prohibited, so it is conceivable that further testing would be required. The drug patch is also susceptible to outside environmental contamination in limited situations.[7]

Because the drug-monitoring patch is invasive and would reveal far more personal information than necessary, it is not narrowly tailored and cannot survive the *Olsen* balancing test.

2. Special Needs

The State also contends it has a special need to monitor the drug use of pretrial releasees via a drug-monitoring patch. The special needs exception "permits an otherwise unlawful search 'when special needs, beyond the normal need for law enforcement, make the warrant and probable cause requirement impractical.' " *Blomstrom*, 189 Wn.2d at 407 (internal quotation marks omitted) (quoting *Griffin v. Wisconsin,* 483 U.S. 868, 873, 107 S. Ct. 3164, 97 L. Ed. 2d 709 (1987)). For a special need to exist, the State must show "(1) a purpose

[7] Bailey-Cobb and Toombs cite to *United States v. Snyder*, 187 F. Supp. 2d 52, 60 (N.D.N.Y. 2002) to support this assertion. The case is attached as an exhibit to Bailey-Cobb's writ of habeas corpus.

outside of general law enforcement, (2) that this purpose makes obtaining a warrant or probable cause impractical, and (3) that this purpose outweighs the privacy interest infringed." *Blomstrom*, 189 Wn.2d at 407.

Determining whether the special needs exception applies requires the court to " 'undertake a context-specific inquiry, examining closely the competing private and public interests advanced by the parties.' " *Robinson*, 102 Wn. App. at 815 (quoting *Chandler v. Miller*, 520 U.S. 305, 314, 117 S. Ct. 1295, 137 L. Ed. 2d 513 (1997)). Even when an important government interest may be placed in jeopardy if the State were required to have probable cause before conducting a search, the State must show that interest outweighs an individual's privacy interest implicated by the search.

Here, the State maintains a special need exists because requiring a warrant or probable cause "would jeopardize the State's need to monitor the defendants for the sake of public safety." But our Supreme Court has repeatedly declined to apply a special needs exception under article I, section 7. *See, e.g.*, *Evans*, 5 Wn.3d at 215 (declining to adopt the federal special needs exception for administrative searches of pretrial releasees); *Blomstrom*, 189 Wn.2d at 410 (declining to apply the special needs exception for urinalysis testing of pretrial releasees). Like the balancing test, precedent does not support applying the special needs exception to the imposition of a drug-monitoring patch for pretrial releasees.

But, even if we were to recognize a special needs exception under article I, section 7, the requirements are not met here. The State contends it has a special need to impose the drug-monitoring patch because requiring a warrant or probable cause would jeopardize the State's need to monitor Bailey-Cobb and Toombs for the public's safety. However, assuming the State can show that requiring a warrant or probable cause is impractical to ensure compliance with pretrial release conditions, it cannot show that its interest in protecting the public's safety outweighs Bailey-Cobb's and Toombs's privacy interests implicated by the search. Bailey-Cobb and Toombs do not suffer a diminished expectation of privacy, and the drug-monitoring patch is highly invasive and would reveal personal information far beyond what is necessary to ensure compliance with their pretrial release conditions. For these reasons, the State cannot meet the requirements to impose the special needs exception.

We conclude that the balancing test and the special needs exception do not apply to Bailey-Cobb or Toombs; therefore, the State cannot show RCW 10.21.045 or CrRLJ 3.2 are constitutional authorities of law that support use of a drug-monitoring patch as applied to the facts of this case.[8]

[8] Bailey-Cobb and Toombs make several arguments for why RCW 10.21.045 does not provide authority of law, including that it allows a court to impose conditions of release without a valid search warrant or an order meeting the warrant requirement, and it conflicts with CrRLJ 3.2. Because we conclude imposing a drug-monitoring patch is unconstitutional under any authority, we do not reach the issues of warrant requirements and conflicting court rules.

CrRLJ 3.2(d)

Both Bailey-Cobb and Toombs contend the trial court exceeded its authority when it imposed the drug-monitoring patch under CrRLJ 3.2 because the court did not make the requisite findings to overcome the presumption of release. Because we conclude CrRLJ 3.2 does not provide authority of law to justify the imposition of a drug-monitoring patch, we do not reach this issue.

We reverse and remand for the court to amend Bailey-Cobb's and Toombs's pretrial release orders to remove the drug-monitoring patch requirement.

WE CONCUR: