Law Enforcement Digest

FIVE-YEAR SUBJECT MATTER INDEX FOR 2009 THROUGH 2013

Law enforcement officers: Thank you for your service, protection and sacrifice.

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FIVE-YEAR SUBJECT MATTER INDEX FOR 2009 THROUGH 2013

LED EDITORIAL NOTE: Since establishing the LED as a monthly publication in 1979, the Criminal Justice Training Commission has published several multi-year subject matter indexes: a 10-year index of LEDs from January 1979 through December 1988; a 5-year index from January 1989 through December 1993; a 5-year index from January 1994 through December 1998; a 5-year index from January 1999 through December 2003; and a 5-year index from January 2004 through December 2008. The 1989-1993, 1994-1998, 1999-2003, and 2004-2008 indexes, as well as monthly issues of the LED starting with January of 1992, are available on the Criminal Justice Training Commission (CJTC) website at: https://fortress.wa.gov/cjtc/www/. Click on Publications and Resources, then Law Enforcement Digest. By mid-January of 2014, we will have added to the CJTC the 5-year index for the January 2009 through December 2013. Also, the annual subject matter index has historically appeared in the December LED. Beginning in 2012, the annual subject matter index has been published as a separate document that, like the monthly LEDs, can be found on the CJTC's LED webpage.

In this 5-year index for, entries are arranged chronologically within each category and subcategory based on the date of the appearance in the LED (in other words, earlier entries appear before later entries within the categories and subcategories). Citations to court decisions include a citation to the LED as the final part of the entries; the LED citation is abbreviated. For example, the citation in the first entry under "Accomplice Liability," immediately following this note, to "State v. Montejano, 147 Wn. App. 696 (Div. III, 2008) – March 09:25" means that the Montejano entry appears in the March 2009 LED starting at page 25.

Readers will also note that prior to approximately 2010 the LED did not include specific dates in case citations. Correct case citation form does not include specific dates; however, we began including the dates to assist readers in locating cases on the internet.

ACCOMPLICE LIABILITY (RCW 9A.08.020)

Accomplice liability statute does not make unarmed rioter guilty of felony riot. State v. Montejano, 147 Wn. App. 696 (Div. III, 2008) – March 09:25

Where motor vehicle passenger was injured in a DUI crash, she was a "victim" under RCW 9A.08.020(5), and therefore she could not lawfully be convicted of DUI as an accomplice. City of Auburn v. Hedlund, 165 Wn.2d 645 (2009) – July 09:19

Father of boy and girl who were both under age eight held guilty of incest and child rape for causing them to have sex with each other. State v. Bobenhouse, 166 Wn.2d 881 (2009) – October 09:14

Accomplice who was not present in a school zone at the time of cohort's delivery of controlled substances cannot receive school zone sentence enhancement for the offense. State v. Pineda-Pineda, 154 Wn. App. 653 (Div. I, 2010) – April 10:20

ANIMAL CRUELTY (Chapter 16.52 RCW)

First degree animal cruelty statute is not void for vagueness as applied; starvation and dehydration are alternative means of committing first degree animal cruelty; however, evidence is held sufficient to establish horses suffered dehydration causing substantial and unjustifiable pain as result of defendant's neglect; trial court has authority to order defendant to reimburse county for cost of caring for horses. State v. Peterson, 174 Wn. App. 828 (Div. I, May 20, 2013) – September 13:23

ARREST, STOP AND FRISK (See also "Searches" topic)

Car frisk for gun was reasonable after cuffing suspect beside the car from which he was seized. State v. Chang, 147 Wn. App. 490 (Div. I, 2008) – January 09:03

Asking occupants of a legally parked car what they were doing and requesting identification was not a "seizure." State v. Afana, 147 Wn. App. 843 (Div. III, 2008) – January 09:07 Note: The Washington Supreme Court reversed on other grounds; see Searches topic below, under the subtopic for Motor Vehicle Searches Incident to Arrest.

Under totality of circumstances, passenger in legally parked car was "seized" where officer told driver that she was not free to leave, and then told passenger that his laundry story was "suspicious" and asked him for identification. State v. Beito, 147 Wn. App. 504 (Div. III, 2008) – January 09:09

Officer had reasonable suspicion for a Terry stop in light of his corroboration of frightened woman's report that two men had asked her to get into their car to go with them to smoke crack cocaine. State v. Lee, 147 Wn. App. 912 (Div. I, 2008) – February 09:11

Arizona officer had Fourth Amendment Terry frisk authority during traffic stop while questioning passenger about possible gang affiliation (Washington law likely differs, however). Arizona v. Johnson, 555 U.S. 323 (2009) – March 09:03

Where police are merely negligent in failing to update police computer re arrest warrant, exclusionary rule of Fourth Amendment does not require suppression of evidence seized in search incident to arrest (Washington law likely differs, however). Herring v. United States, 555 U.S. 135 (2009) – March 09:03

"Fellow Officer Rule," plus flimsiness of suspect's claim that she thought a casino ticket had been abandoned, add up to probable cause to arrest her for theft of the casino ticket. State v. Wagner-Bennett, 148 Wn. App. 538 (Div. I, 2009) – March 09:15

Ninth Circuit 3-judge panel reverses itself and holds officers had qualified immunity from Civil Rights Act liability in arrest of person who passed a $100 bill that appeared to be counterfeit, but turned out to be real. Rodis v. City and County of San Francisco, 558 F.3d 964 (9th Cir., March 9, 2009) – April 09:04

Less-than-two-minute visit to known drug house at 3:20 a.m. by person unknown to police officer held to provide officer with reasonable suspicion that justified stopping the suspect's car as he drove away. State v. Doughty, 148 Wn. App. 585 (Div. III, 2009) – April 09:14. Note: The Washington Supreme Court reversed this decision; see entry below this topic.

Frisk held not supported by reasonable belief of danger, and therefore officer held not entitled to qualified immunity from civil liability under 42 U.S.C. Section 1983 (Federal Civil Rights Act). Ramirez v. City of Buena Park, 560 F.3d 1012 (9th Cir., March 25, 2009) – May 09:08

Bench warrant for failure to obey sentencing to work crew did not require new probable cause determination or sworn statement; warrant also was not stale. State v. Bishop, 149 Wn. App. 439 (Div. II, 2009) – May 09:14

Seizure of drugs based on "plain feel" through coin pocket of pants held unlawful because officer manipulated baggie after determining with his sense of touch that the baggie was not a weapon, and that it did not contain a weapon. State v. Garvin, 166 Wn.2d 242 (2009) – July 09:18

Informant-based reasonable suspicion standard of Terry v. Ohio met to justify seizure of drug suspect; also, Miranda warnings were not required prior to questioning Terry stop detainee. State v. Marcum, 149 Wn. App. 894 (Div. I, 2009) – August 09:17

Section 1983 Civil Rights lawsuit: Court holds that detective should not have relied on uncorroborated marginal story of four-year-old child as probable cause to arrest molestation suspect; also, Court remands to district court to consider detective's alleged promises of leniency to allegedly mentally and emotionally challenged juvenile suspect. Stoot v. City of Everett, 582 F.3d 910 (9th Cir., Aug. 13, 2009) – October 09:08 (amended decision reported at 582 F.3d 910 (9th Cir., Sept. 18, 2009) – none of the amendments were of significance, and the amended decision was not reported in the LED)

Facts similar to those in Terry v. Ohio support stop and frisk. United States v. Johnson, 584 F.3d 994 (9th Cir., Sept. 10, 2009) – November 09:02

Extraterritorial arrest: reckless driving does not qualify per se as an "emergency involving an immediate threat to human life or property" under RCW 10.93.070(2). State v. King, 167 Wn.2d 324 (2009) – December 09:21

Vehicle stop held not pretextual; open view of methamphetamine manufacturing materials provides exigent circumstances supporting vehicle entry to secure the materials. State v. Gibson, 152 Wn. App. 945 (Div. II, 2009) – January 10:11

Description of motor vehicle owner in motor vehicle registration records check, plus observation, provides reasonable suspicion to stop motor vehicle for arrest warrants; but case must be remanded for fact hearing on search incident and maybe other issues. State v. Bliss, 153 Wn. App. 197 (Div. II, 2009) – January 10:22

Field (or "social") contact held to have developed into an unlawful seizure without reasonable suspicion at the point during the field contact when the officer requested consent to frisk. State v. Harrington, 167 Wn.2d 656 (2009) – February 10:17

RCW 46.63.030: Where the infraction of second degree negligent driving did not occur in law enforcement officer's presence, officer could not lawfully issue a citation for that infraction. State v. Magee, 167 Wn.2d 639 (2009) – February 10:23

Bench warrant for failure to appear at probation violation hearing need not be supported by probable cause. State v. Erickson, 168 Wn.2d 41 (2010) – March 10:12

Officer's street contact and request for voluntary giving of information and production of identification held not a "seizure" – pretextual or otherwise. State v. Bailey, 154 Wn. App. 295 (Div. III, 2010) – March 10:13

E-911 call, plus officer's observation of evidence of the likely aftermath of a fight, add up to probable cause to arrest for domestic violence assault. State v. Trujillo, 153 Wn. App. 454 (Div. III, 2009) – March 10:19

Totality of circumstances, including officer's request to look in contacted person's wallet for identification, was not a Terry seizure. State v. Smith, 154 Wn. App. 695 (Div. II, 2010) – April 10:17

Washington State University police officer had authority for off-campus arrest under Mutual Aid Agreement. State v. Hardgrove, 154 Wn. App. 182 (Div. III, 2010) – April 10:22

Division One Court of Appeals panel interprets post-Valdez Washington vehicle search incident rule to permit a search for marijuana based on odor from passenger area; also, stop for no headlights under RCW 46.37.020 held justified by reasonable suspicion and held not pretextual. State v. Wright, 155 Wn. App. 537 (Div. I, 2010) – June 10:12. Note: The Washington Supreme Court reversed this decision; see entry below this topic.

In-person report by unknown, unidentified UPS driver held to be reliable in support of reasonable suspicion for a Terry stop. United States v. Palos-Marquez, 591 F.3d 1272 (9th Cir., Jan. 19, 2010) – July 10:11

Asking passenger in parked car for ID was not a "seizure"; also, car search challenge fails because theory was not raised at time of trial. State v. Johnson, 156 Wn. App. 82 (Div. II, 2010) – July 10:21

Officer's contact with person in private marina and request for ID was not a seizure; officer's state of mind was irrelevant to seizure issue. State v. Hopkins, 156 Wn. App. 468 (Div. II, 2010) – August 10:19

Furtive gestures by passenger plus other suspicious behavior add up to justification for frisk of passenger during late-night traffic stop. United States v. Burkett, 612 F.3d 1103 (9th Cir., July 20, 2010) – September 10:07

Where officer shouted to passenger to stop as he ran from car that officer was stopping for traffic violation, officer may have unlawfully seized passenger under Young and Mendez; but use of gun by defendant to resist seizure was not justified under Valentine. State v. Mann, 157 Wn. App. 428 (Div. III, 2010) – October 10:22

Two-minute visit at 3:20 a.m. to suspected "drug house" was not "reasonable suspicion" for Terry stop of visitor to house where sole apparent basis for police labeling of premises as "drug house" was neighbors' reports of recent pattern of heavy "short stay traffic" to house. State v. Doughty, 170 Wn.2d 57 (2010) – November 10:04

Seizure and arrest of person upheld because (1) initial stop was supported by reasonable suspicion of car prowling, (2) arrest was supported by probable cause of same, and arrest was for gross misdemeanor crime against property, thus meeting misdemeanor presence exception of RCW 10.31.100(1). But search of car held to violate search incident rule of article I, section 7 of Washington constitution even though the search would have been lawful under the Fourth Amendment search incident rule of Arizona v. Gant. State v. Chesley, 158 Wn. App. 36 (Div. II, 2010) – November 10:14

Police contact with drug suspect was lawful social contact, and officer's request to take his hands from his pockets did not make contact a seizure; show-up ID was not too suggestive; Crawford Sixth Amendment confrontation rule does not apply to suppression hearings. State v. Fortun-Cebada, 158 Wn. App. 158 (Div. I, Oct. 25, 2010) – January 11:15

Standing, Miranda, scope-of-stop, and spousal privilege issues addressed in pro-state rulings in case where officer asked female driver protected by a no-contact order to identify male passenger. State v. Shufelen, 150 Wn. App. 244 (Div. I, April 13, 2009) – February 11:15

Civil Rights Act lawsuit: no bright line rule for time of Terry detention; officers must diligently pursue investigation. Liberal v. Estrada, 632 F.3d 1064 (9th Cir. Jan. 19, 2011) – March 11:11

Civil Rights Act lawsuit: Ninth Circuit approves of Seattle officers' arrest and detention of mentally unstable woman on crack cocaine. Luchtel v. Hagemann, 623 F.3d 1078 (9th Cir. Oct. 7, 2010) – March 11:14

Defendant's Terry, Miranda, consent, and curtilage arguments rejected in case involving officers' investigation of previous evening's gunfire at campsite on national forest service land. United States v. Basher, 629 F.3d 1161 (9th Cir. Jan. 20, 2011) – April 11:02

Arrest for violation of Seattle drug loitering ordinance held under special facts to meet RCW 10.31.100 misdemeanor presence requirement, but court declares that collective knowledge, or police team, rule generally does not apply in analyzing misdemeanor-presence question. State v. Ortega, 159 Wn. App. 889 (Div. I, Feb. 7, 2011) – April 11:17
Note: The Washington State Supreme Court reversed this decision; see entry below this topic.

Appeals court reverses district court's ruling that traffic stop was pretextual in DUI case where officer followed speeding driver for 3 blocks after seeing him unlawfully exit parking lot by driving over a sidewalk without stopping, and where officer did not cite him for either of the traffic infractions. State v. Weber, 159 Wn. App. 779 (Div. III, Feb. 3,

2011) – April 11:20

Officer did not improperly exceed the scope of traffic stop when with justification he checked on no-contact order protecting passenger. State v. Pettit, 160 Wn. App. 716 (Div. II, Jan. 11, 2011) – May 11:12

In a split decision, the Court of Appeals holds that where an officer erroneously believed that a citizen's conclusory report provided justification to stop a vehicle for DUI, and the officer's primary reason for his stop was to investigate the possible DUI, the stop was unlawfully pretextual even though the officer observed a minor traffic violation and based the stop in part on the latter violation. State v. Arreola, 163 Wn. App. 787 (Div. III, Sept. 15, 2011) – November 11:06 Note: the Washington Supreme Court reversed this decision; see entry below this topic.

In a split decision, the Court of Appeals holds that an officer who activated patrol car's emergency lights, pulled in behind parked van, and got out and asked nearby driver of van what he was doing in neighborhood seized the driver without required reasonable suspicion or community caretaking basis. State v. Gantt, 163 Wn. App. 133 (Div. III, Aug. 16, 2011) – November 11:10

In a split decision, the Court of Appeals holds that officer did not have reasonable suspicion for a Terry stop where the officer saw an unknown male driver in a vehicle stopped in a known prostitution area talk to a female pedestrian unknown to the officer and allow her to get into his vehicle. State v. Diluzio, 162 Wn. App. 585 (Div. III, July 12, 2011) – November 11:17

Frisk of companion of drug paraphernalia arrestee held justified in light of factual basis for stop of the two men (i.e., two suspects' earlier presence in suspected stolen vehicle) plus their nervous behavior and their continued ignoring of officer's requests to keep their hands in view, not turn away, and not approach the officer. State v. Ibrahim, 164 Wn. App. 503 (Div. III, Oct. 27, 2011) – April 12:20

Washington Supreme Court holds: (1) Washington constitution's search incident rule does not authorize search of vehicle after arrestee-occupant has been secured, despite probable cause as to evidence of crime of arrest being in the vehicle; (2) defendant Wright was lawfully stopped on reasonable suspicion of traffic infraction; and (3) the stop of Wright was not pretextual. State v. Snapp, 174 Wn.2d 177 (April 5, 2012) and State v. Wright, 174 Wn.2d 177 (April 5, 2012) – May 12:25

There is no pretext problem where officers make a traffic stop of an individual to determine the person's name where officers already possess probable cause to arrest the person for selling drugs, though they choose tactically to not yet make the arrest. State v. Quezadas-Gomez, 165 Wn. App. 593 (Div. II, Dec. 20, 2011), review denied, 173 Wn.2d 1034 (April 24, 2012) – June 12:23

Unsupported "seizure" found in follow-up, late-night contact where, in second contact, two officers essentially cornered woman behind laundromat and asked her for identifying information. State v. Young, 167 Wn. App. 922 (Div. II, May 1, 2012) – July 12:12

Court finds probable cause to arrest for possession of controlled substance where officer observed a glass tube, consistent with a tube that could be used to ingest illegal drugs, containing a white chalky substance (even though the arrest was originally for

mere possession of drug paraphernalia, which is a nonexistent crime under Washington state statutes). State v. Rose, 175 Wn.2d 10 (Aug. 9, 2012) – October 12:07

Held: 1) arrest preceded search that yielded rape suspect's ID cards, so search incident to arrest was lawful; and 2) RCW 10.31.030's requirement that arrestee be allowed to post bail before any booking inventory does not apply where items were seized incident to arrest as evidence of crime. State v. Salinas, 169 Wn. App. 210 (Div. I, July 2, 2012) – October 12:17

Split panel rejects stop by border patrol agents, holding that the list of facts relied on by the federal agents are all too ambiguous and therefore do not add up to reasonable suspicion of smuggling of aliens or drugs. United States v. Valdes-Vega, 685 F.3d 1138 (9th Cir., July 25, 2012) – December 12:12 Status: On April 25, 2013, the Ninth Circuit withdrew the 3-judge panel's decision and ordered rehearing by an en banc (11-judge) panel.

Order to empty pockets is a search. United States v. Pope, 686 F.3d 1078 (9th Cir., July 17, 2012) – December 12:13

Shooting pepperball projectile into eye of college partier held unconstitutional seizure in violation of established case law, so no qualified immunity for officers. Nelson v. City of Davis, 685 F.3d 867 (9th Cir., July 10, 2012) – December 12:13

3 holdings: (1) Terry seizure of witness/suspect was reasonable; (2) arrest was lawful under RCW 10.31.100 because officer had probable cause as to harm to person and/or taking of personal property; (3) but strip search at jail violated chapter 10.79 RCW because suspect's mere nervousness did not justify it, and there was no supervisor approval. State v. Barron, 170 Wn. App. 742 (Div. III, Sept. 18, 2012) – January 13:14

A 2-1 majority concludes that: (1) delay in frisking suspect undercuts government's argument that frisk was justified by reasonable belief of danger; and (2) in any event, government failed to present evidence to show that lifting suspect's shirt was done for safety reason. United States v. I.E.V., 705 F.3d 430 (9th Cir., Nov. 28, 2012) – February 13:07

Seizure, not mere social contact, occurred where officer's accusation of criminal activity was followed by his request that teens voluntarily empty their pockets; also, community caretaking argument based on truancy law rejected because evidence fails to support it. State v. Guevara, 172 Wn. App. 184 (Div. III, Dec. 6, 2012) – February 13:09

No pretext in "mixed motive" traffic stop where the primary motive is the officer's desire to investigate a possible DUI, but officer also consciously decides to make stop to address minor traffic violation. State v. Arreola, 176 Wn.2d 284 (Dec. 20, 2012) – March 13:07

In night-time, shots-fired response, reasonable suspicion supports Terry stop of spotlighted possible gang member driver wearing red in blue-colors rival gang area and driving quickly down a rutted alley. State v. Moreno, 173 Wn. App. 479 (Div. III, Feb. 12, 2013) – April 13:15

Ninth Circuit will reconsider decision that held that federal officers lacked reasonable suspicion of smuggling of illegal aliens or of drugs. On April 25, 2013, the Ninth Circuit withdrew the 3-judge panel's Valdes-Vega decision reported in the December 2012 LED. See

United States v. Valdes-Vega, 685 F.3d 1138 (9th Cir., July 25, 2012) Dec 12 LED:12 – June 13:14

Arrest by officer who was not in the observation post and did not see gross misdemeanor violation of Seattle drug-loitering ordinance held not to meet RCW 10.31.100 misdemeanor-presence rule; also, fellow-officer or police team rule does not apply such as to make arrest lawful under RCW 10.31.100's misdemeanor-presence requirement. State v. Ortega, 177 Wn.2d 116 (March 21, 2013) – June 13:19

Fourth Amendment ruling under California v. Hodari D. is that gun that suspect tossed before he complied with police seizure order is admissible even though the seizure order was based on an earlier unlawful police search; result would be different under the Washington constitution. United States v. McClendon, 713 F.3d 1211 (9th Cir., April 19, 2013) – July 13:13

Case must go to jury trial on whether: (1) Terry seizure violated Ninth Circuit's Fourth Amendment ruling in Grigg limiting seizures for completed misdemeanors; (2) officer's pulling of Taser in contacting suspect was justified; and (3) arrest of cursing suspect was lawful. Johnson v. Bay Area Rapid Transit District, 724 F.3d 1159 (9th Cir., July 30, 2013) – October 13:09

ARSON (Chapter 9A.48 RCW)

Dead body is not a "human being" under first degree arson statute. State v. Bainard, 148 Wn. App. 93 (Div. III, 2009) – March 09:24

For purposes of first degree arson statute, RCW 9A.48.020, "valued at" refers to value for insurance purposes, not market value; court finds sufficient evidence to establish mobile home was "valued at" greater than $10,000. State v. Sweany, 162 Wn. App. 223 (Div. III, June 14, 2011) – November 11:22 Note: The Washington Supreme Court affirmed but under different analysis; see entry below this topic.

For purposes of first degree arson statute, RCW 9A.48.020, "valued at" refers to market value, not value for insurance purposes; Supreme Court finds sufficient evidence to establish market value of mobile home equal to or greater than $10,000. State v. Sweany, 174 Wn.2d 909 (July 19, 2012) – September 12:05

ASSAULT AND RELATED OFFENSES (Chapter 9A.36 RCW)

Rough "rabid dog" game in which father bit and bruised his 4-month-old child's face results in second degree assault conviction. State v. Hovig, 149 Wn. App. 1 (Div. II, 2009) – May 09:21

"Intent" in Washington's first degree assault statute includes the broad concept of "transferred intent." State v. Elmi, 166 Wn.2d 209 (2009) – August 09:15

Floor can be an "instrument or thing likely to produce bodily harm" under third degree assault statute where there is evidence that defendant had his arm around victim's neck and rode him to the floor. State v. Marohl, 151 Wn. App. 469 (Div. II, 2009) – September 09:23 Note: The Washington Supreme Court reversed this decision; see entry below this topic.

Swollen eye and face pain throughout at least a morning held to be enough to support assault three conviction. State v. Fry, 153 Wn. App. 235 (Div. III, 2009) – April 10:23

Floor held not to be an "instrument or thing likely to produce bodily harm" under third degree assault statute where defendant had his arm around victim's neck and they went to the floor together. State v. Marohl, 170 Wn.2d 691 (Dec. 20, 2010) – February 11:07

Evidence sufficient to support conviction for attempted drive-by shooting even though gun was improperly loaded and would not fire. State v. Oakley, 158 Wn. App. 544 (Div. II, Oct. 19, 2010) – February 11:18

Assault on law enforcement officer is Assault Three even if assailant does not know the victim is an officer. State v. Williams, 159 Wn. App. 298 (Div. I, Jan. 10, 2011) – May 11:19

Evidence held sufficient to support conviction of special education teacher for Fourth Degree Assault against student. State v. Jarvis, 160 Wn. App. 111 (Div. II, Feb. 11, 2011) – May 11:20

Evidence held sufficient to meet "injury" and "impairment" elements of second degree assault under RCW 9A.36.021(1)(a) and RCW 9A.04.110(4)(b). State v. McKague, 159 Wn. App. 489 (Div. II, January 19, 2011) – September 11:15 Note: The Washington State Supreme Court affirmed this decision in State v. McKague, 172 Wn.2d 802 (Oct. 6, 2011) February 12:11; see entry below this topic.

Evidence held sufficient to show that defendant inflicted substantial bodily harm and hence second degree assault under RCW 9A.36.021(1)(a) and RCW 9A.04.110(4)(b), but Washington Supreme Court disapproves of the Court of Appeals definition of "substantial bodily harm." State v. McKague, 172 Wn.2d 802 (Oct. 6, 2011) – February 12:11

Furniture that victim struck when she was thrown by defendant is not "instrument or thing likely to produce bodily harm" for purposes of third degree assault statute. State v. Shepard, Jr., 167 Wn. App. 887 (Div. III, May 1, 2012) – September 12:17

Split court holds that aunt's use of her car to interfere with officer's attempt to pull over her nephew constituted assault in the second degree, but it did not constitute intimidating a public servant. State v. Toscano, 166 Wn. App. 546 (Div. III, Feb. 7, 2012) – September 12:24

Sufficient facts to go to a jury in third degree assault prosecution where nine-year-old took gun belonging to his mother's boyfriend to school and accidentally shot a classmate. State v. Bauer, 174 Wn. App. 59 (Div. II, March 8, 2013) – July 13:24 Status: The Washington Supreme Court is reviewing the case.

Court of Appeals finds sufficient evidence to convict defendant of (1) assault in the third degree for reaching toward a park ranger, and (2) resisting arrest, even where officer did not formally say "you are under arrest." State v. Calvin, ___ Wn. App. ___, 302 P.3d 509 (Div. I, May 28, 2013) – September 13:20

Evidence of premeditation held sufficient to support first degree murder conviction in death of spouse; also, under a transferred intent theory, evidence also held to support second degree assault conviction for injury to daughter who had tried to block fatal attack. State v. Aguilar, 176 Wn. App. 264 (Div. III, Aug. 20, 2013) – November 13:24

ATTEMPT (Chapter 9A.28 RCW)

Evidence in sex sting case held sufficient to support substantial step and intent elements of attempted child rape. State v. Wilson, 158 Wn. App. 305 (Div. I, Nov. 1, 2010) – February 11:22

In prosecution for attempted promotion of commercial sexual abuse of minor, State must prove defendant knew victim was a minor, but defendant may be convicted even where "victims" are adult undercover police officers. State v. Johnson, 173 Wn.2d 895 (Feb. 23, 2012) – June 12:20

ATTORNEY-CLIENT PRIVILEGE

Article: Inadvertent law enforcement agency recording of attorney telephone calls in violation of attorney-client privilege. – February 13:02

Detective's conduct in listening to several telephone conversations between a defendant and his attorney was egregious misconduct giving rise to a presumption of prejudice; however, under the unusual circumstances of this case, the presumption is overcome. State v. Pena Fuentes, 172 Wn. App. 755 (Div. I, Jan. 14, 2013) – March 13:15 Status: The Washington Supreme Court is reviewing the case.

BAIL JUMPING (RCW 9A.76.170)

Bail jumping is classified for sentencing purposes based on charge existing at time of jump, not on ultimate disposition of that charge. State v. Coucil, 151 Wn. App. 131 (Div. I, 2009) – September 09:19 Note: The Washington Supreme Court affirmed this decision; see entry below this topic.

Bail jumping conviction stands even though, because of defendant's absconding behavior, no court proceeding occurred on the hearing date on which he failed to appear. State v. Aguilar, 153 Wn. App. 265 (Div. III, 2009) – April 10:20

Bail jumping is classified for sentencing purposes based on charge existing at time of jump, not on ultimate disposition of that charge. State v. Coucil, 170 Wn.2d 704 (Dec. 30, 2010) – February 11:06

BOMB THREATS (RCW 9.61.160)

A bomb threat made by a psychiatric patient constituted a true threat under Washington's objective test even though the follow-up investigation revealed that the patient claimed to have a "cosmic" security clearance and lacked capacity to carry out the threat. State v. Ballew, 167 Wn. App. 359 (Div. I, March 26, 2012**)** – September 12:11

BURGLARY (Chapter 9A.52 RCW)

Burglary of mother's locked bedroom – evidence of implied bar to son's entry of room can support burglary charge. State v. Cantu, 156 Wn.2d 819 (2006) – March 09:13

"Abandoned building" defense held not applicable in prosecution for second degree burglary. State v. Jensen, 149 Wn. App. 393 (Div. II, 2009) – May 09:18

Phrase, "fenced area," in RCW 9A.04.110(5)'s definition of "building" receives a narrowing construction in a burglary case; area (a) must be "curtilage" or its non-dwelling-building equivalent, and also (b) must be completely enclosed (1) by fencing alone or (2) a combination of fencing and a structure that meets the ordinary sense of "building." State v. Engel, 166 Wn.2d 572 (2009) – September 09:10

Previously "trespassed" person caught shoplifting held guilty of burglary, not just trespassing, for two alternative reasons. State v. Morris, 150 Wn. App. 927 (Div. II, 2009) – September 09:13

"Residential burglary": Tool room of apartment building held to be part of a "dwelling." State v. Neal, 161 Wn. App. 111 (Div. I, April 11, 2011) – September 11:10

Evidence that defendant stood on front porch, punched across the threshold, and hit a person inside the home is sufficient to support his conviction for first degree burglary. State v. Koss, 158 Wn. App. 8 (Div. III, Aug. 19, 2010) – February 11:17

Locomotive held to be "railroad car" and, in any event, a "building" under second degree burglary statute and related Chapter 9A RCW definitions. State v. Johnson, 159 Wn. App. 766 (Div. II, Feb. 1, 2011) – May 11:14

Knife possessed during burglary was not proven to have been used, attempted to be used, or threatened to be used, and therefore First Degree Burglary conviction must be reversed. In re Personal Restraint of Martinez, 171 Wn.2d 354 (April 28, 2011) – August 11:13

Man who violated domestic violence no-contact order excluding him from ex-wife's residence not allowed to argue that she had consented to his presence, and that therefore he had not committed burglary. State v. Sanchez, 166 Wn. App. 304 (Div. III, Jan. 31, 2012) – August 12:18

Where man was aware that woman objected to man's presence within her home, man could not defend against burglary charge on theory that woman's 14-year-old daughter consented to his entry and presence. State v. Cordero, 170 Wn. App. 351 (Div. III, Aug. 28, 2012) – December 12:15

Evidence sufficient to establish first degree burglary where one of the defendants carried a shotgun, stolen from the victim, to a waiting vehicle. State v. Hernandez/Rivera/Delacruz, 172 Wn. App. 537 (Div. II, Dec. 26, 2012) – March 13:20

CIVIL LIABILITY

Civil Rights Act lawsuits

The proof standard in section 1983 federal civil rights case involving officer's urgent use of deadly force focuses on whether officer "acted with a purpose to harm . . . unrelated to legitimate law enforcement objectives." Porter v. Osborn, 546 F.3d 1131 (9th Cir., Oct. 20, 2008) – January 09:02

No qualified immunity in case where plaintiffs allege detectives violated Brady due process requirement that officers share exculpatory evidence with prosecutor's office re

pending criminal case. Tennison v. City and County of San Francisco, 548 F.3d 1293 (9th Cir., Dec. 8, 2008) – February 09:05

Case must go to trial on issue of whether officer violated First Amendment when he ordered voter-registrant/signature-gatherer to move her table from a public sidewalk where a specially permitted "cook-off" was being held by a private business. Dietrich v. John Ascuaga's Nugget, 548 F.3d 892 (9th Cir., Dec. 1, 2008) – March 09:09

Free speech: Seattle's parade ordinance that limits marching in the street held to give police chief too much discretion. Seattle Affiliate Of The October 22nd Coalition To Stop Police Brutality, Repression And Criminality Of A Generation v. City of Seattle, 550 F.3d 788 (9th Cir. , Dec. 12, 2008) – March 09:09

Ninth Circuit 3-judge panel reverses itself and holds officers had qualified immunity from Civil Rights Act liability in arrest of person who passed what appeared to be a counterfeit bill. Rodis v. City and County of San Francisco, 558 F.3d 964 (9th Cir., March 9, 2009) – April 09:04

Payton rule requiring warrant before officers make forcible arrest from residence held not applicable to 12-hour standoff because, for standoffs, exigency is deemed to exist from start to finish. Fisher v. City of San Jose, 558 F.3d 1069 (9th Cir., March 9, 2009) – April 09:04

No qualified immunity from federal Civil Rights Act liability for officer alleged to have deliberately fabricated evidence. McSherry v. City of Long Beach, 560 F.3d 1125 (9th Cir., March 30, 2009) – May 09: 06 Note: The 3-judge panel subsequently reversed itself in a superseding decision filed October 20, 2009; see entry below this topic.

Frisk held not supported by reasonable belief of danger, and therefore officer held not entitled to qualified immunity from civil liability under 42 U.S.C. Section 1983 (Federal Civil Rights Act). Ramirez v. City of Buena Park, 560 F.3d 1012 (9th Cir., March 25, 2009) – May 09:08

Search warrant overbroad but officers are held immune from Civil Rights liability where deputy prosecutor had approved it, and officers' belief warrant was supported by probable cause was reasonable. Millender v. County of Los Angeles, 564 F.3d 1143 (9th Cir., May 6, 2009) – August 09:15 Note: An 11-judge panel reversed this decision, and then the United States Supreme Court reversed that decision; see the entries below in this subtopic.

Ninth Circuit panel holds that detective should not have relied on uncorroborated marginal story of four-year-old child as probable cause to arrest molestation suspect; also, court remands to district court to consider detective's alleged promises of leniency to allegedly mentally and emotionally challenged juvenile suspect. Stoot v. City of Everett, 582 F.3d 910 (9th Cir., Aug. 13, 2009) – October 09:08 Note: Amended decision reported at 582 F.3d 910 (9th Cir., Sept. 18, 2009) but not in the LED – none of the amendments were of significance.

3-judge panel reverses itself and grants summary judgment to detective and his law enforcement agency in Civil Rights Act case where plaintiff alleges that detective fabricated evidence. McSherry v. City of Long Beach, 584 F.3d 1129 (9th Cir., Oct. 20, 2009) – December 09:17

Officer held qualifiedly immune in taking of possibly endangered child into protective custody without court order or parental notice; however, action against agency must go to trial on failure-to-train theory, in part based on failure of officer to notify local non-custodial (but local and actively involved) parent. Burke v. County of Alameda, 586 F.3d 725 (9th Cir., Nov. 10, 2009) – January 10:02

Taser held to be an "intermediate" "significant" level of non-lethal force requiring strong government interest to justify its use; Court holds Taser use not lawful if no "immediate threat"; Court also indicates that mental health problems of civilian may militate against use of Taser. Bryan v. McPherson, 590 F.3d 767 (9th Cir., Dec. 28, 2009) – February 10:02. Note: See the entry below this subtopic regarding the Ninth Circuit's revised decision on qualified immunity in Bryan.

Unlawful Fourth Amendment "seizure" occurred when caseworker and law enforcement officer interviewed possible child sex abuse victim at elementary school without parental consent, court order, or exigent circumstances. Greene v. Camreta, 588 F.3d 1011 (9th Cir., Dec. 10, 2009) – February 10:05 Note: The United States Supreme Court granted review and directed that the Ninth Circuit decision be withdrawn because the case is moot, so no substantive decision can be made; see entry below this subtopic.

Taser use held reasonable on the totality of the circumstances. Mattos v. Agarano, 590 F.3d 1082 (9th Cir., Jan. 12, 2010) – March 10:05. Note: The Ninth Circuit granted the plaintiff's motion for rehearing before a larger panel of judges, November 10:04; see entry below this subtopic.

Prisoner's section 1983 Federal Civil Rights Act lawsuit under cruel and unusual punishment provision of the Eighth Amendment alleging excessive force by corrections officer focuses on the purpose of the use of force, not on the extent of injury. Wilkins v. Gaddy, ___U.S. ___, 130 S. Ct. 1175 (Feb. 22, 2010) – April 10:07

No "excessive force" and hence no Civil Rights Act liability because officers acted reasonably and therefore are entitled to qualified immunity in relation to their use of a Taser in "touch/drive-stun" mode on a misdemeanant arrestee who was resisting arrest. Brooks v. Seattle, 599 F.3d 1018 (9th Cir., March 26, 2010) – June 10:10. Note: The Ninth Circuit granted the plaintiff's motion for rehearing before a larger panel of judges (November 10:04), and the larger panel reversed; see entry below this topic.

Clause in search warrant held not overbroad in authorizing seizure of indicia of identity of persons in control of premises. Ewing v. City of Stockton, 588 F.3d 1218 (9th Cir., Dec. 9, 2009) – August 10:08

Use of deadly force against driver of imperiling, careening van was not unlawful under either the Fourth or Fourteenth Amendment. Wilkinson v. Torres, 610 F.3d 546 (9th Cir. , July 6, 2010) – September 10:02

Fifth Amendment violation: California officers used unlawful coercion when they told 14-year-old during custodial interrogation that, if he confessed, he would get treatment, but if he did not confess, he would get jail. Crowe v. County of San Diego, 608 F.3d 406 (9th Cir., June 18, 2010) – September 10:05

Three-judge panel revises opinion in Civil Rights Act case involving Taser use; opinion still holds that officer used excessive force but now concludes that officer is entitled to

qualified immunity. Bryan v. McPherson, 608 F.3d 614 (9th Cir., June 18, 2010) – September 10:07 Note: The 3-judge panel issued a second revised opinion in this case, reported at 630 F.3d 805 (9th Cir., Nov. 20, 2010); there were no material changes in the analysis, so the revised opinion was not digested in the LED. Also on November 30, 2010, and also not digested in the LED was the Ninth Circuit's decision not to grant further review.

Search warrant held overbroad, and line officers held not immune from civil liability even though superiors and deputy prosecutor approved warrant before judge signed it – 8-3 majority holds officers were not reasonable in believing that warrant was supported by probable cause to search for gang indicia and firearms evidence generally. Millender v. County of Los Angeles, 620 F.3d 1016 (9th Cir. , Aug. 24, 2010) – October 10:03 Note: The United States Supreme Court reversed this decision; see entry below this subtopic.

Fitness for duty re-examination of officer by same psychologist and officer's dismissal for refusal of the re-exam held lawful. Brownfield v. City of Yakima, 612 F.3d 1140 (9th Cir., June 18, 2010) – October 10:06

Fire department administrators and contract attorney violated firefighter's Fourth Amendment rights when, during an internal affairs investigation, they ordered him to retrieve some objects from his home on pain of being disciplined for insubordination. Delia v. City of Rialto, 621 F.3d 1069 (9th Cir., Sept. 9, 2010) – November 10:03

Officers' warrantless entry into home to investigate possible school-threat not justified by exigent circumstances; two officers are entitled to qualified immunity based on their reasonable belief that they had consent to enter, and two officers are not. Huff v. City of Burbank, 632 F.3d 539 (9th Cir., Jan. 11, 2011) – March 11:02 Note: The United States Supreme Court reversed this decision and ruled for the officers; see entry below this subtopic.

There is no "bright line" rule for the lawful duration of a Terry detention; officers must diligently pursue investigations under the totality of the circumstances. Liberal v. Estrada, 632 F.3d 1064 (9th Cir., Jan. 19, 2011) – March 11:11

Under the facts of this case, where no emergency existed and several male correctional officers stood by, 6-5 majority rules that the "strip search" of a male pretrial detainee by a female cadet violated the Fourth Amendment. Byrd v. Maricopa County Sheriff's Department, 629 F.3d 1135 (9th Cir., Jan. 5, 2011) – March 11:12

Claim based on alleged Brady violation cannot be brought where the plaintiff was not convicted of a crime. Smith v. Almada, 623 F.3d 1078 (9th Cir., Oct. 19, 2010) – March 11:12 Note: The Ninth Circuit subsequently issued a revised set of opinions in Smith v. Almada, 640 F.3d 931 (9th Cir., March 21, 2011) Oct 11 LED:07, though reaching the same result; see entry below this subtopic.

Ninth Circuit approves of Seattle officers' arrest and detention of mentally unstable woman on crack cocaine. Luchtel v. Hagemann, 623 F.3d 1078 (9th Cir., Oct. 7, 2010) – March 11:14

Officers' forcible entry of home of driver who minutes earlier had been involved in minor car collision held not justified by possibility of emergency circumstances based on other driver's belief she had smelled alcohol was actually evidence of first driver being near diabetic coma. Hopkins v. Bonvicino, 573 F.3d 752 (9th Cir., July 16, 2009) – May 11:06

Action under 42 U.S.C. § 1983 may not be pursued if suit challenges, directly or indirectly, validity of criminal conviction. Szajer v. City of Los Angeles, 632 F.3d 607 (9th Cir., Feb. 11, 2011) – May 11:07

Jail inmate in beating case is entitled to trial based on claim of individual supervisory liability of Los Angeles County Sheriff under Eighth Amendment on a deliberate indifference theory. Starr v. Baca, 633 F.3d 1191 (9th Cir., Feb. 11, 2011) – May 11:08 Note: The Ninth Circuit issued a revised decision that had the same result and did not make material changes in the analysis; see entry below this subtopic.

Supreme Court sets aside, in a mootness ruling, a 2009 Ninth Circuit ruling that an unlawful Fourth Amendment "seizure" occurred when a social services caseworker and a law enforcement officer interviewed a possible child sex abuse victim at her elementary school without parental consent, court order, or exigent circumstances. Camreta v. Greene, ___U.S. ___, 131 S. Ct. 2020 (May 26, 2011) – August 11:12

Federal statute protecting religion in institutions applies to county courthouse holding facility, so United States District Court must address whether statute was violated by ordering Muslim woman to remove headscarf. Khatib v. County of Orange, 639 F.3d 898 (9th Cir. March 15, 2011) – September 11:06

District attorney's office may not be held liable under 42 U.S.C. §1983 for failure to train its prosecutors based on a single Brady violation. Connick v. Thompson, ___U.S. ___, 131 S. Ct. 1350 (March 29, 2011) – October 11:03

County jails might be required to distribute unsolicited publication (Crime, Justice & America) to inmates. Hrdlicka v. Reniff, 631 F.3d 1044 (9th Cir., Jan. 31, 2011) – October 11:09

Qualified immunity for elected sheriff who transferred lieutenant out of policy-making position for supporting opponent does not protect sheriff from claim for alleged retaliation after transfer. Bardzik v. County of Orange, 635 F.3d 1138 (9th Cir., March 28, 2011) – October 11:06

Panel muddies water in Civil Rights Act lawsuit when it equivocates on whether claim based on alleged Brady violation can be brought where the plaintiff was not convicted of a crime. Smith v. Almada, 640 F.3d 931 (9th Cir., March 21, 2011) – October 11:07

Split 3-judge panel holds that affidavit did not add up to probable cause to search home computer for child pornography in describing (1) teacher's molesting and other misbehavior with female students, plus (2) detective-affiant's training and experience. Dougherty v. City of Covina, 654 F.3d 892 (9th Cir., Aug. 16, 2011) – November 11:03

Officer who fatally shot driver after the driver rammed her vehicle into police vehicles at end of high speed chase is entitled to qualified immunity from due process-based liability. A.D. v. Markgraf, California Highway Patrol, 636 F.3d 555 (9th Cir., April 6, 2011) – November 11:03 Note: The 3-judge panel subsequently reversed itself and denied qualified immunity to the officer; see entry below this subtopic.

Majority of split en banc (10-judge) panel holds in two cases that Taser use by officers was not reasonable, but that the officers are entitled to qualified immunity in both cases. Mattos v. [named law enforcement officers] and Maui County; Brooks v. City of Seattle [and named law enforcement officers], 661 F.3d 433 (9th Cir., Oct. 17, 2011) – January 12:02 Note:

On May 24, 2012, the United States Supreme Court denied requests in both Mattos and Brooks for discretionary review.

Split 3-judge panel holds that case must go to trial on the question of whether detectives got search and arrest warrants for child pornography using affidavit that deliberately or recklessly contained material omissions and false statements. Chism v. Washington State, 661 F.3d 380 (9th Cir., Nov. 7, 2011) – January 12:16 Note: On April 16, 2012, the United States Supreme Court denied the State's request for review of this decision.

Deputies who were suspended without pay upon being charged with felonies must be afforded post-suspension hearings in addition to limited pre-suspension procedures. Association for Los Angeles Deputy Sheriffs v. County of Los Angeles, 648 F.3d 986 (9th Cir., Aug. 12, 2011) – January 12:22

Ninth Circuit withdraws and supersedes prior opinion in Starr v. Baca (Civil Rights Act lawsuit by inmate against Los Angeles County Sheriff) with no substantive change. Starr v. Baca, 652 F.3d 1202 (9th Cir., July 25, 2011) – January 12:23

Nevada Department of Corrections' prohibition on individual possession of typewriters declared justified and therefore constitutional. Nevada Department of Corrections v. Greene, 648 F.3d 1014 (9th Cir., Aug. 15, 2011) – February 12:07

United States Supreme Court grants qualified immunity to officers who forcibly entered residence in school-bomb-threat-rumor case where home occupant ran inside when officer asked whether there were guns in the residence. Ryburn v. Huff, ___U.S. ___, 132 S. Ct. 987 (Jan. 23, 2012) (United States Supreme Court unanimously reverses Huff v. City of Burbank, 632 F.3d 539 (9th Cir., Jan. 11, 2011) March 11:02) – April 12:03

Lawsuit arising out of Nevada state prison held not to meet Eighth Amendment because harassing act of guard not "harmful enough," but claim for retaliation must go to trial. Watison v. Carter, 668 F.3d 1108 (9th Cir., Feb. 13, 2012) – April 12:08

Parents of driver shot and killed by police officer may not sue the police where: (a) a passenger in the vehicle was convicted as accomplice for assaulting police with the vehicle, and (b) shooting was held justified by jury in earlier criminal case. Beets v. County of Los Angeles, 669 F.3d 1038 (9th Cir., Feb. 10, 2012) – April 12:08

Allegations sufficient to go to trial where family alleges detective was at least reckless in omitting from search warrant affidavit fact that son-suspect was in prison, so could not have committed crime or hidden weapons from that crime in family home. Bravo v. City of Santa Maria (California), 665 F.3d 1076 (9th Cir., Dec. 9, 2011) – April 12:09

Genuine issue of material fact held to be present as to whether use of less-than-lethal beanbag shotgun, and subsequent use of lethal force against drunk and "suicidal" young man, was reasonable use of force under facts alleged by plaintiff. Glenn v. Washington County, 661 F.3d 460 (9th Cir., Nov. 4, 2011, amended Dec. 27, 2011) – April 12:11

Genuine issue of material fact exists as to whether use of pepper spray and baton against broccoli- and tomato-eating traffic detainee who was a jackass but not a safety threat in refusing to get back into his vehicle was reasonable under the facts alleged by plaintiff. Young v. County of Los Angeles, 655 F.3d 1156 (9th Cir., Aug. 26, 2011) – April 12:12

Court grants qualified immunity to officers who entered home to seize guns after making a mandatory arrest for domestic violence assault in the fourth degree; court also holds that officers are immune from liability under RCW 10.99.070. Feis v. King County Sheriff's Office, 166 Wn. App. 525 (Div. I, Dec. 19, 2011), review denied, 173 Wn.2d 1036 (April 24, 2012) – April 12:22 **United States Supreme Court reverses Ninth Circuit decision as detectives get qualified immunity for search warrant application broadly seeking firearms and gang evidence during investigation of shooting that plaintiffs characterized as isolated DV incident; supervisor and deputy prosecutor review a factor in granting qualified immunity.** Messerschmidt v. Millender, ___U.S. ___, 132 S. Ct. 1235 (Feb. 22, 2012) – June 12:06

United States Supreme Court reverses Ninth Circuit decision that denied qualified immunity to temporary-contract-attorney for City of Rialto, California; Ninth Circuit erred in basing denial of qualified immunity on mere fact that the attorney was not an employee of the city. Filarsky v. Delia, ___ U.S. ___, 132 S. Ct. 1657 (April 17, 2012) – July 12:03

United States Supreme Court holds that every person arrested and held temporarily at holding or other jail facility may be subjected to routine close visual inspections while undressed, so long as it involves only visual inspection without touching or abusive gestures, prior to entering the general population. Florence v. Board of Chosen Freeholders of County of Burlington, ___ U.S. ___, 132 S. Ct.1510 (April 2, 2012) – July 12:04

Ninth Circuit sua sponte withdraws opinion in A.D. v. Markgraf, California Highway Patrol. A.D. v. Markgraf, California Highway Patrol, 636 F.3d 555 (9th Cir., April 6, 2012) – July 12:04 Note: The Ninth Circuit subsequently entered a revised opinion and decision in A.D. v. California Highway Patrol, 712 F.3d 446 (9th Cir., April 3, 2013) June 13:14, see entry below this subtopic.

California's all-felony-arrestee DNA statute survives Fourth Amendment challenge. Haskell v. Harris, 669 F.3d 1049 (9th Cir., Feb. 23, 2012) – July 12:05; but see October 2012 LED at page 5 for note that Ninth Circuit has ordered a rehearing in the Haskell case.

California sheriff gets qualified immunity in demotion of lieutenant who ran for sheriff against him. Hunt v. County of Orange, 672 F.3d 606 (9th Cir., Feb. 13, 2012) – July 12:05

Ninth Circuit holds that parents have a substantive due process right to control autopsy photographs against unwarranted government exploitation; former prosecutor's delivery of child autopsy photographs to the media violated this right, however, he is entitled to qualified immunity. Marsh v. County of San Diego, 680 F.3d 1148 (9th Cir., May 29, 2012) – August 12:10

Where domestic violence protection order did not specifically authorize officers to conduct a "civil standby," officer who conducted the "civil standby" while a fellow officer involved in competing DV protection orders removed belongings from the home violated the Fourth Amendment. Osborne v. Seymour, 164 Wn. App. 820 (Div. II, Nov. 9, 2011) – August 12:24

Qualified immunity denied to assistant police chief who allegedly retaliated against a clerical worker for her subpoenaed deposition testimony, on behalf of a former employee, in that former employee's lawsuit claiming a First Amendment free speech

violation. Karl v. City of Mountlake Terrace, 678 F.3d 1062 (9th Cir., May 8, 2012) – November 12:02

Disclosure by police officer of allegedly abusive interrogation tactics was made in the course of his official duties and thus not protected by the First Amendment free speech clause; lawsuit based on retaliation for officer's reporting must be dismissed. Dahlia v. Rodriguez, 689 F.3d 1094 (9th Cir., Aug. 7, 2012) – November 12:08 Note: The Ninth Circuit ordered rehearing en banc. January 13:06 Status: The en banc decision (not reported in the LED) has been issued and can be found at Dahlia v. Rodriguez, ___ F.3d ___, 2013 WL 4437594 (9th Cir., Aug. 21, 2013).

Excessive force claims against officers executing search warrant get different assessment for the claims by non-threatening children at scene than for the claims by adults. Avina v. United States, 681 F.3d 1127 (9th Cir., June 12, 2012) – November 12:10

Shooting pepperball projectile into eye of college partier held unconstitutional seizure in violation of established case law, so no qualified immunity for officers. Nelson v. City of Davis, 685 F.3d 867 (9th Cir., July 10, 2012) – December 12:15

Officer held entitled to qualified immunity against claims that: (1) emergency spinal tap at hospital on infant over mother's objection was a due process violation, and (2) taking and keeping agitated mother from exam room violated Fourth Amendment. Mueller v. Auker, 694 F.3d 989 (9th Cir., Sept. 10, 2012, amended Oct. 25, 2012) – December 12:08

Unabandoned items left on sidewalks momentarily unattended by homeless persons get Fourth Amendment protection from summary seizure and destruction by government. Lavan v. City of Los Angeles, 693 F.3d 1022 (9th Cir., Sept. 5, 2012) – December 12:09

"Disruptive behavior" element of otherwise overbroad ordinance on city council meeting behavior saves ordinance from free speech challenge; qualified immunity for arrest is granted based on probable cause to arrest; no excessive force found. Acosta v. City of Costa Mesa, 694 F.3d 960 (9th Cir., Sept. 5, 2012) – December 12:09 Note: On February 25, 2013, the 3-judge panel withdrew its September 5, 2012 opinion and ordered a rehearing of the appeal; see entry below this subtopic for revised 9th Circuit opinion, reported in July 2013 LED.

Correctional institution loses argument that prisoner's consent to sexual conduct with correctional officer precludes his Eighth Amendment lawsuit regarding that conduct; officer's coercion of sex will be presumed in this context. Wood v. Beauclair, 692 F.3d 1041 (9th Cir., Sept. 4, 2012) – December 12:11

Ninth Circuit panel holds (1) delay transporting bleeding victim from crime scene violated due process; (2) detaining witnesses for four hours was unlawful seizure; (3) force against witness was excessive; (4) supervisors present but not taking charge nonetheless may be liable; (5) Indian tribe paramedics do not get sovereign immunity. Maxwell v. County of San Diego, 697 F.3d 941 (9th Cir., Sept. 13, 2012) – January 13:06. Note: The April 2013 LED (at page 3) reported (1) that on February 14, 2013 the majority and dissenting opinions in Maxwell were revised in minor respects but not materially as to the essential analysis and result; and also (2) that all requests for rehearing were denied.

2-1 ruling favors officers who repeatedly Tased combative man who was performing violent exorcism on his 3-year-old granddaughter, and who had her in a chokehold.

Marquez v. City of Phoenix, 693 F.3d 1167 (9th Cir., Sept. 11, 2012, amended Oct. 4, 2012) – January 13:08

Warrantless entry into curtilage (high-fence-and-gate-enclosed front yard) in gang neighborhood in hot pursuit of suspect where probable cause to arrest was for only disobeying order to stop was not justified under either exigent circumstances or emergency exceptions to the warrant requirement. Sims v. Stanton, 706 F.3d 954 (9th Cir., Dec. 3, 2012, amended Jan. 16, 2013) – February 13:03; March 13:04 Note: The January 2014 LED will contain an entry reporting the United States Supreme Court's reversal of the Ninth Circuit decision in Stanton on the issue of qualified immunity.

Qualified immunity granted in lawsuit attacking use of Taser in 2006 in making gross misdemeanor arrest; court holds that Ninth Circuit 2010 Bryan v. McPherson decision supports granting the officer qualified immunity; Court also holds that state law supports use of reasonable force to make an arrest for a misdemeanor or gross misdemeanor. Strange v. Spokane County, 171 Wn. App. 585 (Div. III, Oct. 30, 2012) – February 13:12

Qualified immunity denied to officers who broke out driver's side window of car reported stolen and pulled the suspect out through it; the jury must decide whose story to believe as to whether plaintiff was trying to follow the officers' orders. Coles v. Eagle, 704 F.3d 624 (9th Cir., Dec. 5, 2012) – March 13:05

Massachusetts prosecutor and other state officials entitled to absolute immunity for decision not to extradite offender who subsequently commits murders in Washington. Slater v. Clarke, 700 F.3d 1200 (9th Cir., Nov. 19, 2012) – March 13:06

Rehearing granted in "disruptive behavior" Civil Rights Act case. Acosta v. City of Costa Mesa – April 13:06 Note: See entry below this subtopic for revised 9th Circuit decision, reported in July 2013 LED.

Majority and dissenting opinions in Maxwell case revised slightly but not materially, and court denies reconsideration in case where officers are faulted for, among other things, delay in getting shooting victim transported for medical help. Maxwell v. County of San Diego, 708 F.3d 1075 (9th Cir., Feb. 14, 2013) – April 13:03

Prison officials entitled to qualified immunity in case involving contraband watch. Chappell v. Mandeville, 706 F.3d 1052 (9th Cir., Jan. 31, 2013) – April 13:03

Issue of material fact precludes summary judgment on Eighth Amendment claim based on correctional officers' use of pepper spray; summary judgment appropriate on Fourteenth Amendment equal protection claim based on denial of religious vegetarian breakfast. Furnace v. Sullivan, 705 F.3d 1021 (9th Cir., Jan. 17, 2013) – April 13:08

Qualified immunity for police officer where the officer shot and wounded suspect who had violated no contact order, who was believed to be suicidal, who ignored orders to stop vehicle, and who drove at a high rate of speed toward officer and others, all of whom were on foot. Gallegos v. Freeman, 172 Wn. App. 616 (Div. I, Jan. 7, 2013) – April 13:23

In a reversal of its prior opinion, 3-judge panel of the Ninth Circuit holds that an officer who fatally shot a driver that had rammed her vehicle into police vehicles at the end of a

high speed chase is not entitled to qualified immunity from due process-based liability. A.D. v. California Highway Patrol, 712 F.3d 446 (9th Cir., April 3, 2013) – June 13:14

Probable cause to arrest for violation of noise ordinance does not preclude plaintiff's First Amendment free speech claims based on alleged retaliatory booking. Ford v. City of Yakima, 706 F.3d 1188 (9th Cir., Feb. 8, 2013) – June 13:16

"Disruptive behavior" element of otherwise overbroad ordinance on city council meeting behavior does not save ordinance from free speech challenge in light of the court doctrine regarding severance; but qualified immunity granted to officers based on rulings of probable cause to arrest and no excessive force. Acosta v. City of Costa Mesa, 718 F.3d 800 (9th Cir., May 3, 2013) – July 13:12

No qualified immunity for officers who use chokehold, apply pepper spray, and apply significant knee pressure to the back of the non-resistant brother of a person they are attempting to arrest on a warrant. Barnard v. Theobald, 721 F.3d 1069 (9th Cir., July 1, 2013) – September 13:07

Prison officials are entitled to absolute immunity from suit when carrying out facially valid court order. Engebretson v. Mahoney, 717 F.3d 693 (9th Cir., May 30, 2013) – August 13:10

Ninth Circuit panel rules in favor of city in use of deadly force case involving non-compliant motorist attempting to drive away with officers inside and outside of the vehicle. Gonzalez v. City of Anaheim, 715 F.3d 766 (9th Cir., May 13, 2013) – September 13:11

Issues of material fact regarding whether man who was fatally shot on his patio posed an immediate threat to officers preclude summary judgment on excessive force claim. George v. Morris, 724 F.3d 1191 (9th Cir., July 30, 2013) – October 13:03

Case must go to jury trial on whether: (1) Terry seizure violated Ninth Circuit's Fourth Amendment ruling in Grigg limiting seizures for completed misdemeanors; (2) officer's pulling of Taser in contacting suspect was justified; and (3) arrest of cursing suspect was lawful. Johnson v. Bay Area Rapid Transit District, 724 F.3d 1159 (9th Cir., July 30, 2013) – October 13:09

Trial ordered in case involving Tasing of allegedly obstructing bystander who did not back up when ordered to do so. Gravelet-Blondin v. [Named Officer] and City of Snohomish, 728 F.3d 1086 (9th Cir., Sept. 6, 2013) – November 13:10 Status: The law enforcement defendants are seeking United States Supreme Court review.

Threatening statements made by student are not entitled to free speech protection. Wynar v. Douglas County School Dist., 728 F.3d 1062 (9th Cir., Aug. 29, 2013) – November 13:12

Lawsuits based on negligence

Judge's order to deputy sheriff to escort prisoner from courtroom to jail did not give the deputy "judicial immunity" from a civil suit for negligence when the prisoner escaped en route to jail and caused injury to a courthouse security guard. Lallas v. Skagit County, 167 Wn.2d 861 (2009) – March 10:13

Under rationale that officers engaged in affirmative act of "taking control" of scene, and did so negligently, rather than merely negligently failing to act in the first place, Court of Appeals rules that lawsuit against City of Seattle and named officers can go forward on negligence theory that is not precluded by the "public duty" doctrine. Robb v. City of Seattle, 159 Wn. App. 133 (Div. I, Dec. 27, 2010) – February 11:13 Note: The Washington State Supreme Court granted review, Aug 11 LED:03, and reversed the Court of Appeals decision; see entry below this subtopic.

Deadly force case must go to jury on a negligence theory under California law where, among other things, no officer gave warning before fatal shooting. Hayes v. County of San Diego, 638 F.3d 688 (9th Cir., March 22, 2011) – May 11:05 Note: The Ninth Circuit subsequently issued an order withdrawing the March 22, 2011 decision in Hayes and certifying the issue to the California State Supreme Court, Hayes v. County of San Diego, 658 F.3d 867 (9th Cir. June 14, 2011) – **Oct 11 LED:04**; see entry below this subtopic.

To prove "special relationship" between crime victim and government as exception to "public duty doctrine," 911 operator's statements to caller need not be shown by plaintiffs to have been false or inaccurate. Munich v. Skagit Emergency Communications Center, 161 Wn. App. 116 (Div. I, April 11, 2011) – July 11:22 Note: The Washington Supreme Court affirmed this decision; see entry below this subtopic.

Ninth Circuit withdraws opinion in Hayes v. County of San Diego and certifies issue to California State Supreme Court. Hayes v. County of San Diego, 658 F.3d 867 (9th Cir. June 14, 2011) – October 11:04 Status: The California Supreme Court entered a decision on Aug. 21, 2013) and sent the case back to the federal courts.

Public duty doctrine requires dismissal of lawsuit brought by estate of missing person with history of seizure disorders, where citizen called 911 to report erratic driving by vehicle matching the description of the missing person's vehicle, 911 operator accurately informed citizen that the agency would "notify troopers", and missing person was found dead a week-and-a-half later. Johnson v. State of Washington, 164 Wn. App. 740 (Div. II, Nov. 8, 2011) – July 12:22

Public duty doctrine precludes suit by widow of intoxicated pedestrian who was run over by a drunk driver 1.5 hours after officer contacted pedestrian and told him (1) to stay off City of Spokane's busy Division Street, and (2) that, if he had to be on the street, to walk facing traffic. Weaver v. Spokane County, 168 Wn. App. 127 (Div. III, May 8, 2012) – September 12:06

Court holds that city failed to preserve its challenge to a trial court instruction that allowed jury to find the city liable for negligence in the service of an anti-harassment order where the respondent on the order killed the petitioner shortly after service of the order by the police. Washburn v. City of Federal Way, 169 Wn. App. 588 (Div. I, July 23, 2012) – December 12:22 Note: The Washington Supreme Court affirmed. See entry below this subtopic.

To prove "special relationship" between crime victim and government as exception to "public duty doctrine," 911 operator's statements to caller need not be shown by victim/plaintiff to have been false or inaccurate. Munich v. Skagit Emergency Communications Center (and others), 175 Wn.2d 871 (Nov. 1, 2012) – January 13:10

Duty of police in negligence case to protect a victim from a criminal cannot be based on their mere failure to act where they have no special relationship with the victim or criminal; Seattle PD officers did not engage in an affirmative act that would create a duty because they did not create a new risk but instead only failed to eliminate risk by not picking up shotgun shells left on ground by an unknown other person. Robb v. City of Seattle, 176 Wn.2d 427 (Jan. 31, 2013) – April 13:10

Washington State Criminal Justice Training Commission's immunity statute, RCW 43.101.390, receives broad application in dismissal of basic law enforcement academy student police officer's claim against WSCJTC for injury. Ent v. Washington State Criminal Justice Training Commission, 174 Wn. App. 615 (Div. I, April 29, 2013) – August 13:22

In civil suit pitting private parties, dangerous dog ordinance is interpreted by 2-1 majority to also make County subject to liability based on "failure to enforce" exception to "public duty doctrine." Gorman v. Pierce County, 176 Wn. App. 63 (Div. II, Aug. 13, 2013) – October 13:21

Public duty doctrine does not bar lawsuit for negligence in service of an anti-harassment order; jury verdict against city upheld. Washburn v. City of Federal Way, ___Wn.2d ___, 310 P.3d 1275 (Oct. 17, 2013) – December 13:06

Lawsuits based on theories other than Civil Rights Act or negligence

Washington State Patrol may be liable for damages based on former WSP policy of mandatory impound of vehicles of suspended drivers. Potter v. Washington State Patrol, 165 Wn.2d 67 (2008) – January 09:03

County government is civilly liable for workplace discrimination by its elected prosecutor because the county is a single unit of government. Broyles v. Thurston County, 147 Wn. App. 409 (Div. II, 2008) – January 09:23

Claim for wrongful termination in violation of public policy is allowed to proceed notwithstanding existence of Public Employees Relations Commission (PERC) remedy. Piel v. City of Federal Way, 177 Wn.2d 604 (June 27, 2013) – September 13:13

CIVIL SERVICE AND EMPLOYMENT LAW

High standard set for overturning arbitrator's ruling in disciplinary matter. Kitsap County Deputy Sheriff's Guild v. LaFrance, 167 Wn.2d 428 (2009) – January 10:05

Seattle Public Safety Civil Service Commission's reduction of discipline of untruthful officer from termination to thirty days suspension is reversed because record does not support Commission's rationale that Seattle P.D. was inconsistent in discipline; Commission ordered to reconsider its decision. Werner v. Seattle, 163 Wn. App. 899 (Div. I, Sept. 19, 2011) – February 12:14

CJTC LED INTERNET PAGE

Announcement: WAPA staff attorney Pam Loginsky's 2010 summary on confessions, search, seizure and arrest is accessible on CJTC LED page. – August 10:02

Announcement: Law enforcement articles on (1) Miranda initiation of contact and (2) identification procedures have been updated on the Criminal Justice Training Commission's internet LED page. – November 10:03

Announcement: Law Enforcement Digest co-editor, John Wasberg, is retiring; current co-editor, Shannon Inglis, will continue as the LED editor – May 11:03

Announcement: The 2011 edition of "Confessions, Search, Seizure and Arrest: A Guide for Police Officers and Prosecutors" by Washington Association of Prosecuting Attorneys (WAPA) Staff Attorney Pamela B. Loginsky, is now available on the LED webpage under the special topics heading – August 11:02

Announcement: Materials by John Wasberg addressing several legal subject areas have been updated as of July 25, 2011 and are available on the Criminal Justice Training Commission's Internet LED page under "special topics." – October 11:02

Announcement: The 2012 edition of "Confessions, Search, Seizure And Arrest: A Guide For Police Officers And Prosecutors" by Washington Association of Prosecuting Attorneys (WAPA) staff attorney, Pamela B. Loginsky, is available on the LED webpage under the "special topics" heading. – August 12:03

Announcement: Materials by John Wasberg addressing several legal subject areas have been updated as of August 2, 2012 and are available on the Criminal Justice Training Commission's Internet LED page under "Special Topics." – October 12:02

Announcement: Article on "Eyewitness identification procedures: legal and practical aspects" has been updated as of October 25, 2012 and is available on the Criminal Justice Training Commission's Internet LED page under "Special Topics" – January 13:02

Announcement: 2012 edition of the Washington "Prosecutors' Domestic Violence Handbook," including a "police investigation" appendix, is now available on the website for the Washington Association of Prosecuting Attorneys – January 13:03

Announcement: Beginning with the May 2013 LED, the WSCJTC will also include a link to the most recent LED edition in the "Weekly Training Announcement" e-mail, which is sent by the Advanced Training Division, specifically Leanna Bidinger, Statewide Regional Training Coordination/Leadership Program Manager. Agencies may wish to ask that their training coordinators forward the link to officers. – June 13:02

Announcement: Materials by John Wasberg addressing several subject areas have been updated through July 1, 2013 and are available on the Criminal Justice Training Commission's Internet LED page under "Special Topics." – September 13:04

CONSPIRACY (RCW 9A.28.040)

Evidence that people provided guns to defendant knowing of her ongoing strife with her estranged husband is evidence of agreement and supports a murder-conspiracy charge against her. State v. Stark, 158 Wn. App. 952 (Div. III, Dec. 16, 2010) – February 11:19

CONSTRUCTIVE POSSESSION

Backseat passenger's mere proximity to weapon and knowledge of weapon's presence is insufficient to convict defendant of unlawful possession of a firearm based upon constructive possession. State v. Chouinard, 169 Wn. App. 895 (Div. II, Aug. 8, 2012) – December 12:20

CORPUS DELICTI DOCTRINE (Common law and RCW 10.58.035)

Corpus delicti rule does not bar from evidence defendant's admission to police regarding a gun being in his residence – other evidence supported the conclusion that the gun was there at the time. State v. Page, 147 Wn. App. 849 (Div. II, 2008) – March 09:23

Corpus delicti rule: Child's testimony that defendant attempted to have intercourse was sufficient corroboration to support admission into evidence of defendant's confession to penetration. State v. Angulo, 148 Wn. App. 642 (Div. III, 2009) – September 09:24

RCW 10.58.035 held constitutional but also held not to have relaxed the corroboration requirement for sufficiency of evidence under corpus delicti rule; court appears to have issued a mostly advisory opinion. State v. Dow, 168 Wn.2d 243 (2010) – May 10:21

Corpus delicti of first-degree child molestation established. State v. Grogan, 158 Wn. App. 272 (Div. III, Oct. 28, 2010) – August 11:22

Corpus delicti – prima facie evidence independent of defendant's statements establishing that victim died from criminal act – held established in murder case where body of victim has never been found, but she disappeared without warning under suspicious circumstances. State v. Hummel, 166 Wn. App. 749 (Div. I, Jan. 3, 2012) – July 12:15

CRIMINAL MISTREATMENT (Chapter 9A.42 RCW)

Under facts of case where an elderly father had previously pressed assault charges against his adult caretaking son, the jury should have been instructed that care cannot be forced on a person. State v. Koch, 157 Wn. App. 20 (Div. II, 2010) – November 10:21

CRIMINAL RULE 3.1 (and CrRLJ 3.1) (ARRESTEE RIGHT TO ATTORNEY WARNINGS AND CONTACT) (See also topic "Interrogations and confessions")

Arrestee who had initially invoked his right to an attorney under Criminal Rule 3.1 held to have waived that right where he initiated a conversation with officers and made volunteered statements. State v. Mullins, 158 Wn. App. 360 (Div. II, Nov. 1, 2010) – January 11:20

Double-murder defendant wins argument that 1) he unequivocally asserted his right under Criminal Rule 3.1 to attorney contact, and 2) he was not given reasonable assistance to make such contact. State v. Pierce, 169 Wn. App. 533 (Div. II, July 17, 2012) – October 12:13

CRUEL AND UNUSUAL PUNISHMENT (EIGHTH AMENDMENT)

Eighth Amendment of United States constitution held to bar sentencing juveniles to life without parole for non-homicide crimes. Graham v. Florida, ___U.S. ___, 130 S. Ct. 2011 (2010) – July 10:08

Eighth Amendment of United States constitution prohibits mandatory sentence of life without parole for juvenile offender in any circumstance. Miller v. Alabama and Jackson v. Hobbs, ___U.S. ___, 132 S. Ct. 2455 (June 25, 2012) – August 12:04

Correctional institution loses argument that prisoner's consent to sexual conduct with correctional officer precludes prisoner's Eighth Amendment lawsuit regarding that conduct; officer's coercion of sex will be presumed in this context. Wood v. Beauclair, 692 F.3d 1041 (9th Cir., Sept. 4, 2012) – December 12:11

DEPORTATION FOR CRIMINAL OFFENSES

Conviction of use of drug paraphernalia, RCW 69.50.412, is a deportable offense under federal law. United States v. Oseguera-Madrigal, 700 F.3d 1196 (9th Cir., Nov. 19, 2012) – March 13:07

DISCOVERY OF EVIDENCE UNDER CRIMINAL COURT RULES (See also topic "Due Process, Including Brady Requirements on Government")

Defendant entitled to better access to his computer records. State v. Dingman, 149 Wn. App. 648 (Div. II, 2009) – May 09:22

While charges are pending, court may lawfully order taking of defendant's DNA based on probable cause – warrant not required in addition to the court order. State v. Garcia-Salgado, 149 Wn. App. 702 (Div. I, 2009) – November 09:14 Note: The Washington Supreme Court granted review and reversed this decision; see entry below this topic.

State prosecutor in drug case held required to disclose to defendant that federal agency was conducting video surveillance of defendant's home during time of alleged state crimes. State v. Krenik, 156 Wn. App. 314 (Div. I, 2010) – August 10:24

Under Criminal Discovery Rule 4.7 and State v. Boyd, attorneys for child pornography defendant may obtain court order to take and freely review mirror images of his computer's hard drive. State v. Grenning, 169 Wn.2d 47 (2010) – September 10:15

Pre-trial defense interviews with police officers are not "private conversations" within the meaning of chapter 9.73 RCW (Privacy Act) so consent is not required to tape record; however, officers' refusal to have conversations tape recorded does not constitute refusal to discuss the case and does not justify the court ordering a deposition. State v. Mankin, 158 Wn. App. 111 (Div. II, October 19, 2010) – March 11:22

Cheek swab to obtain DNA sample while charges are pending constitutes search requiring warrant; court order under CrR 4.7 for swab may be okay if supported by probable cause and other safeguards, but record in this case held insufficient to make that determination. State v. Garcia-Salgado, 170 Wn.2d 176 (Oct. 7, 2010) – April 11:10

Failure of prosecution to disclose un-redacted training and performance records of narcotics detection canine constitutes discovery violation. United States v. Thomas, 726 F.3d 1086 (9th Cir., Aug. 8, 2013) – November 13:03

DNA PROFILE DATABASES (See also Topic "Searches" under subtopic "Privacy Expectations, Scope of Constitutional Protections")

Government's continued retention of offender's blood sample, taken for purposes of obtaining a DNA profile, once he had completed his term of supervised release, is reasonable under all of the circumstances for purposes of federal court rule. United States v. Kriesel, 720 F.3d 1137 (9th Cir., June 28, 2013) – September 13:09

Maryland statute authorizing collection of DNA from all adults arrested for serious felonies survives Fourth Amendment constitutional challenge. Maryland v. King, ___ U.S. ___, 133 S. Ct. 1958 (June 3, 2013) – July 13:03

DOMESTIC VIOLENCE (INCLUDING PROTECTION ORDER VIOLATIONS)

Domestic Violence Protection Act protection order cannot be issued to protect 14-year-old because definition of "family or household member" not met. Neilson v. Blanchette, 149 Wn. App. 111 (Div. III, 2009) – April 09:21

Former RCW 26.50.110 made criminal all no-contact order violations, as does the current version of the statute. State v. Bunker, 169 Wn.2d 571 (2010) – October 10:15

Collateral bar rule prohibits challenges to validity of orders issued under chapter 26.50 RCW; language in defendant's order provided adequate notice that violation was a crime. City of Seattle v. May, 171 Wn.2d 847 (June 23, 2011) – October 11:20

Man who violated domestic violence no-contact order excluding him from ex-wife's residence not allowed to argue that she had consented to his presence, and that therefore he had not committed burglary. State v. Sanchez, 166 Wn. App. 304 (Div. III, Jan. 31, 2012) – August 12:18

Check next to "NCO" box on judgment and sentence is sufficient to extend pretrial no contact order upon conviction. State v. Luna, 172 Wn. App. 881 (Div. III, Jan. 17, 2013) – April 13:21

Juvenile court has authority to issue a domestic violence no contact order for the statutory maximum time period, even if the result is that the no contact order will remain in effect beyond the juvenile's eighteenth birthday. State v. W.S., ___ Wn. App. ___, 309 P.3d 589 (Div. I, Aug. 19, 2013) – October 13:21

DOUBLE JEOPARDY

Double jeopardy statute does not preclude prosecutions for drunk driving in both Washington and Oregon on the same evening. State v. Rivera-Santos, 166 Wn.2d 722 (2009) – October 09:15

Conviction of two counts of attempting to elude a police vehicle, based on separate pursuits by two separate law enforcement agencies, does not violate the double jeopardy clause. State v. Chouap, 170 Wn. App. 114 (Div. II, Aug. 14, 2012, amended Sept. 11, 2012) – December 12:18

No double jeopardy violation in charging two acts of malicious mischief committed against the same victim (police department) separately. State v. K.R., 169 Wn. App. 742 (Div. I, July 30, 2012) – December 12:22

No double jeopardy in charging and convicting defendant of third degree theft for stealing a purse and six counts of second degree theft for stealing credit cards from wallet inside the purse. State v. Lust, 174 Wn. App. 887 (Div. III, May 21, 2013) – September 13:22

DRIVER'S PRIVACY PROTECTION ACT (FEDERAL)

Attorney's solicitation of prospective clients falls outside the limit of the exemption from federal Driver's Privacy Protection Act (DPPA) liability for obtaining information for use in connection with judicial and administrative proceedings. Maracich v. Spears, ___ U.S. ___, 133 S. Ct. 2191 (June 17, 2013) – September 13:05

DUE PROCESS, INCLUDING BRADY REQUIREMENTS ON GOVERNMENT

Civil Rights Act: No qualified immunity in case where plaintiffs allege detectives violated Brady due process requirement that officers share exculpatory evidence with prosecutor's office re pending criminal case. Tennison v. City and County of San Francisco, 548 F.3d 1293 (9th Cir., Dec. 8, 2008) – February 09:05

Brady problem of prosecutor not sharing with the defense attorney evidence indicating questionable credibility of the government's star witness requires reversal of conviction regardless of whether or not the lead detective gave the information to the prosecutor. United States v. Price, 566 F.3d 900 (9th Cir., May 21, 2009) – August 09:13

Federal constitution's due process clause does not provide a right to post-conviction DNA testing; statutes provide the only remedies. Dist. Attorney's Office for the Third Judicial Dist. v. Osborne, ___ U.S. ___, 129 S. Ct. 2308 (2009) – September 09:03

Civil Rights Act lawsuit: Claim based on alleged Brady violation cannot be brought where the plaintiff was not convicted of a crime. Smith v. Almada, 623 F.3d 1078 (9th Cir., Oct. 19, 2010) – March 11:12 Note: The Ninth Circuit subsequently issued a revised set of opinions in Smith v. Almada, 640 F.3d 931 (9th Cir, March 21, 2011) – **Oct 11 LED:7**, though reaching the same result; see entry below this topic.

Panel muddies water in Civil Rights Act lawsuit, equivocates on whether claim based on alleged Brady violation can be brought where the plaintiff was not convicted of a crime. Smith v. Almada, 640 F.3d 931 (9th Cir. March 21, 2011) – October 11:07

Conceded Brady violation held by United States Supreme Court to be "material" and to require reversal in Louisiana murder case where murder defendant was not provided with detective's notes impeaching the lone eyewitness. Smith v. Cain, ___ U.S. ___, 132 S. Ct. 627 (Jan. 10, 2012) – March 12:05

Prosecutor lawfully shared with defense attorneys Brady information relating to adverse personnel action in officer's prior job. Doyle v. Lee, 166 Wn. App. 397 (Div. III, Feb. 2, 2012) – April 12:22

Death penalty set aside because State of California knowingly presented false testimony of key witness who claimed that she had not been promised leniency. Phillips v. Ornoski, 673 F.3d 1168 (9th Cir., March 16, 2012, amended May 25, 2012) – July 12:05

Supreme Court finds failure to disclose photographs and FBI file that State had access to but did not disclose until 2009 amounts to a Brady violation, and Court therefore reverses first degree aggravated murder conviction and death sentence. In re Stenson, 174 Wn.2d 474 (May 10, 2012) – July 12:08 Status: On retrial, a jury once again convicted Stenson.

Ninth Circuit concludes that an internal administrative investigation that is complete, but for which no findings have been issued, is nonetheless favorable to defendant for purposes of Brady; however, failure to disclose did not create reasonable probability that verdict in criminal case would be different. United States v. Olsen, 704 F.3d 1172 (9th Cir., Jan. 8, 2013) – May 13:17

Prosecutor's failure to disclose impeachment evidence violated Brady. Milke v. Ryan, 711 F.3d 998 (9th Cir., March 14, 2013) – June 13:15

Under constitutional due process protection, first degree animal cruelty statute is not void for vagueness as applied. State v. Peterson, ___ Wn. App. ___, 301 P.3d 1060 (Div. I, May 20, 2013) – September 13:23

Police canine's prior misidentifications constitute Brady material, knowledge of which is imputed to prosecutor; failure to disclose held to have prejudiced defendant. Aguilar v. Woodford, 725 F.3d 970 (9th Cir., July 29, 2013) – November 13:06

DURESS DEFENSE (RCW 9A.16.060)

Duress defense under RCW 9A.16.060: threat may be implied. State v. Harvill, 169 Wn.2d 254 (2010) – October 10:07

Where victim of shooting knew who shot him and his companion but claimed to police that he did not know, the shooting victim committed "rendering criminal assistance;" also, duress defense was not applicable to the defendant's mere generalized fear of retaliation with no actual threat, express or implied, from another. State v. Budik, 156 Wn. App. 123 (Div. III, 2001) – October 10:17 Note: The Washington Supreme Court reversed this decision on the issue relating to the crime of rendering criminal assistance; see entry below on the topic of "Rendering Criminal Assistance;" the Washington Supreme Court decision did not address the "duress" issue.

Evidence in prosecution of confidential informant for several crimes supports jury instruction on recklessness exception to duress defense under RCW 9A.16.060(3). State v. Healy, 157 Wn. App. 502 (Div. I, Aug. 16, 2010) – May 11:24

ELECTRONIC SURVEILLANCE AND RECORDING (Chapter 9.73 RCW)

Under State v. Modica, pre-trial detainee had no privacy protection against recording of phone call from King County Jail. State v. Archie, 148 Wn. App 198 (Div. I, 2009) – March 09:22

Electronic intercept-and-record court order under Privacy Act (RCW 9.73.090 and RCW 9.73.130) was supported by a showing that other normal investigative procedures would be "unlikely to succeed." State v. Constance, 154 Wn. App. 861 (Div. I, 2010) – September 10:19

Pre-trial defense interviews with police officers are not "private conversations" within the meaning of chapter 9.73 RCW (Privacy Act), so consent is not required to tape record; however, officers' refusal to have conversations tape recorded does not constitute refusal to discuss the case and does not justify the court ordering a deposition. State v. Mankin, 158 Wn. App. 111 (Div. II, Oct. 19, 2010) – March 11:22

Recordings of conversations with undercover ATF agent, made in jail visiting room pursuant to court order authorizing recordings, were lawful under Privacy Act, chapter 9.73 RCW, for three alternative reasons: (1) the conversations in that setting were not private; (2) the defendant's statements conveyed threats of harm to persons; and (3) the court orders authorizing the recordings were properly obtained, including a sufficient showing that normal investigative procedures would be insufficient. State v. Babcock, 168 Wn. App. 598 (Div. II, June 5, 2012) – August 12:16

Defendant loses constitutional, statutory challenges to admission of jail's recordings of his phone conversations with family. State v. Hag, 166 Wn. App. 221 (Div. I, Jan. 30, 2012) – August 12:19

Split decision rejects constitutional and Privacy Act challenges by senders of text messages that officers obtained from iPhones owned by suspected drug users, and that officers subsequently used in drug deal stings. State v. Hinton, 169 Wn. App. 28 (Div. II, June 26, 2012) and State v. Roden, 169 Wn. App. 59 (Div. II, June 26, 2012) – October 12:20 Status: The Washington Supreme Court is reviewing the case.

Recording of one-on-one kitchen conversation with brother-in-law by man who suspected brother-in-law of molesting man's daughters held admissible under chapter 9.73 RCW on rationale that conversation was not "private"; also, other-crimes evidence held admissible under ER 404(b) where uncharged child molesting showed common scheme or plan. State v. Kipp, 171 Wn. App. 14 (Div. II, Oct. 2, 2012) – February 13:20 Status: The Washington Supreme Court is reviewing the case.

ENTRAPMENT (RCW 9A.16.070)

Compliance check by Liquor Control Board using an underage, undercover agent was not a search; also, bar's entrapment and outrageous government conduct challenges fail. Dodge City Saloon v. Liquor Control Board, 168 Wn. App. 388 (Div. II, May 15, 2012) – September 12:13

EVIDENCE LAW

No "custody" and hence no need for Miranda warnings to suspected child molester who came to station voluntarily for polygraph; also, hearsay re statement of deceased six-year-old determined reliable. State v. Grogan, 147 Wn. App. 511 (Div. III, 2008) – January 09:11

14-year-old rape suspect who was questioned with his mother present in his neighbor's bedroom was not in Miranda custody; Court also rules that victim was competent to testify. State v. S.J.W., 149 Wn. App. 912 (Div. I, 2009) – August 09:22

Witnesses who were previously acquainted with defendant lawfully testified that he was the shooter in cab surveillance photos; also, defendant's privacy rights did not preclude state from presenting evidence that defendant had refused to provide a voice exemplar. State v. Collins, 152 Wn. App. 429 (Div. I, 2009) – November 09:11

Trial court's admission of child hearsay statements upheld under analysis of the 9 Ryan factors. State v. Kennealy, 151 Wn. App. 861 (Div. II, 2009) – November 09:18

Gang affiliation evidence held inadmissible under ER 404(b) because such evidence was not shown to be a reason or a motive for the crimes that the State was prosecuting. State v. Scott, 151 Wn. App. 520 (Div. III, 2009) – November 09:22

No improper "vouching" found in officer's testimony regarding demeanor: 1) of alleged victim of domestic violence and sex crimes, and 2) generally of other victims of such crimes. State v. Aguirre, 168 Wn. App. 350 (2010) – April 10:13

Sentencing enhancement for illegal drug delivery near school bus route stop: Measuring wheel evidence must be authenticated if it is to be used to prove distance from bus stop of drug-delivery location. State v. Bashaw, 169 Wn.2d 133 (2010) – August 10:15

Under Sixth Amendment right to confrontation and under RCW 9A.44.020(2)'s "rape shield" provisions, orgy-consent argument by defendant should have been allowed. State v. Jones, 168 Wn.2d 713 (2010) – October 10:10

Child witnesses, just like adult witnesses, are presumed to be competent, and the burden is on the party challenging the witness to rebut that presumption. State v. Webb, 170 Wn.2d 92 (2010) – November 10:12

Expert witness was lawfully allowed to give his opinion that concluded the evidence was consistent with a dogfighting operation. State v. Nelson, 152 Wn. App. 755 (Div. III, 2009) – November 10:22

Standing, Miranda, scope-of-stop, and spousal privilege issues addressed in pro-state rulings in case where officer asked female driver protected by a no-contact order to identify male passenger. State v. Shufelen, 150 Wn. App. 244 (Div. I, April 13, 2009) – February 11:15

State may not lawfully question defendant outside scope of direct testimony either (1) on cross exam or (2) as a rebuttal witness. State v. Epefanio, 156 Wn. App. 378 (Div. III, May 27, 2010) – February 11:20

No privilege for child molester's admissions to his therapist, and no problem with use of search warrant to obtain therapist's records. State v. Hyder, 159 Wn. App. 234 (Div. II, Jan. 4, 2011) – February 11:23

Under appropriate circumstances, gang-related evidence may be introduced to establish motive; however the present case did not present such a circumstance. State v. Mee, 168 Wn. App. 144 (Div. II, May 8, 2012) – September 12:16

Admission of deceased officer's statements at trial violates hearsay rule. United States v. Duenas, 691 F.3d 1070 (9th Cir., Aug. 16, 2012) – December 12:03

Under appropriate circumstances, gang-related evidence may be introduced to establish motive, intent, plan or preparation; 2-1 majority holds that present case presents such circumstances. State v. Embry, Morgan and Parker, 171 Wn. App. 714 (Div. II, Oct. 30, 2012) – January 13:23

Other-crimes evidence held admissible under ER 404(b) where uncharged child molesting showed common scheme or plan. State v. Kipp, 171 Wn. App. 14 (Div. II, Oct. 2, 2012) – February 13:20

EXCESSIVE FORCE USED BY LAW ENFORCEMENT (See "Civil Liability" topic)

EXCLUSIONARY RULE (See subtopic under "Searches" topic)

EX POST FACTO LAWS (CONSTITUTIONAL PROTECTION AGAINST)

Federal law for sex offender registration: Retroactive application held to violate constitutional ex post facto protection. United States v. Juvenile Male (S.E.), 581 F.3d 977 (9th Cir., Sept. 10, 2009)– November 09:09

EXTORTION (Chapter 9A.56 RCW)

Threat to expose public servant's alleged wrongdoing unless money is paid is not First Amendment protected speech. State v. Strong, 167 Wn. App. 1 (Div. III, March 15, 2012) – September 12:23

FEDERAL PREEMPTION OF STATE AND LOCAL LAWS

Much of Arizona immigration law held preempted by federal law. Arizona v. United States, ___U.S. ___, 132 S. Ct. 2492 (June 25, 2012) – August 12:04

FICTITIOUS IDENTIFICATION POSSESSION (See topic "Forgery, Fraud and Similar and Related Crimes")

FIFTH AMENDMENT RIGHT AGAINST SELF-INCRIMINATION (WHERE LAWFULNESS OF AN INTERROGATION NOT AT ISSUE) (See also topic "Interrogations and Confessions")

Detective's testimony characterizing defendant as "evasive" held to be grounds for mistrial in child rape case. State v. Hager, 152 Wn. App. 134 (Div. II, 2009) – October 09:22
Note: The Washington Supreme Court reversed this decision; see entry below this topic.

Officer's testimony that defendant was "evasive" during interrogation did not violate Fifth Amendment right to silence; but remark did violate Sixth Amendment by invading province of jury; that error, however, was cured by timely trial court jury instruction. State v. Hager, 171 Wn.2d 151 (March 10, 2011) – May 11:09

Triple-murder defendants lose because recorded, undercover, Royal Canadian Mounted Police (RCMP) "Mr. Big" sting did not unlawfully coerce their inculpatory statements. State v. Rafay and State v. Burns, 168 Wn. App. 734 (Div. I, June 18, 2012) – August 12:15

Un-Mirandized suspect's selective silence with no express assertion of Fifth Amendment rights during non-custodial and otherwise non-coercive questioning by government investigators may be used against defendant in a criminal prosecution. Salinas v. Texas, ___ U.S. ___, 133 S. Ct. 2174 (June 17, 2013) – August 13:02

FIREARMS LAWS (Chapter 9.41 RCW) AND OTHER WEAPONS LAWS

Juvenile court adjudication as class a felony sex offender permanently precludes restoration of firearms rights under RCW 9.41.040. State v. Hunter, 147 Wn. App. 177 (Div. I, 2008) – January 09:25

Corpus delicti rule does not bar from evidence defendant's admission to police regarding a gun being in his residence – other evidence supported the conclusion that the gun was there at the time. State v. Page, 147 Wn. App. 849 (Div. II, 2008) – March 09:23

Federal statute that bars possession of guns by those convicted of "a misdemeanor crime of domestic violence" does not require that the underlying misdemeanor crime have as an element a domestic relationship between the perpetrator and the victim. United States v. Hayes, 555 U.S. 412 (2009) – April 09:03

In unlawful possession prosecution under RCW 9.41.040, antique replica gun held to be a "firearm" as defined in RCW 9.41.010(1), despite fact that defendant was not in possession of flint, flint-wrap, gunpowder, ball shot and wadding. State v. Releford, 148 Wn. App. 478 (Div. I, 2009) – April 09:22

Retail store loses federal license to sell firearms, in part because store did not send purchasers' handgun applications to chief of police or to sheriff of purchaser's place of residence per RCW 9.41.090(5). The General Store v. Van Loan, 560 F.3d 920 (9th Cir., March 31, 2009) – May 09:11

Trial court order restoring right to possess firearms vacated by Court of Appeals because ten years had not passed since entry of Class B felony conviction. State v. Mihali, 152 Wn. App. 879 (Div. II, 2009) – January 10:14

Second Amendment of federal constitution applies to states, but the content of defendant's challenge to RCW 9.41.040's limits on possession of firearms by children is held inadequate to allow court to address constitutionality of statute. State v. Sieye, 168 Wn.2d 276 (2010) – April 10:15

1996 reclassification of vehicular homicide from Class B to Class A felony was not retroactive and therefore did not change convict's status for purposes of restoration of firearms rights. Rivard v. State, 168 Wn.2d 775 (2010) – July 10:20

Through the Fourteenth Amendment, the Second Amendment of the United States Constitution applies to limit state and local firearms laws. McDonald v. City of Chicago, ___ U.S. ___, 130 S. Ct. 3020 (June 28, 2010) – August 10:08

Conviction under RCW 9.41.040 for unlawfully possessing firearm reversed solely because predicate conviction court (i.e., the trial court in the original case) did not advise the defendant of the firearms-rights-loss consequences of the conviction. State v. Breitung, 155 Wn. App. 606 (Div. II, 2010) – October 10:25 Note: The Washington Supreme Court affirmed the result but refined the analysis; see entry below this topic.

Rusty firearm was proved to have been "operational" at time of possession for purposes of prosecution under RCW 9.41.040 for unlawfully possessing a firearm. State v. Raleigh, 157 Wn. App. 728 (Div. II, 2010) – November 10:25

Constructive possession of drugs and firearm established where defendant was sole occupant of truck registered to him. State v. Bowen, 157 Wn. App. 821 (Div. II, Sept. 21,

2010) – February 11:19

Conviction under RCW 9.41.040 for unlawful possession of firearm reversed because (1) trial court in original case did not advise of firearms-rights-loss consequence of conviction, and (2) defendant was not shown to otherwise have learned of such consequences. State v. Breitung, 173 Wn.2d 393 (Dec. 29, 2011) – February 12:09

City ordinance prohibiting possession of firearms in public parks or park facilities is preempted by State law. Chan v. City of Seattle, 164 Wn. App. 549 (Div. I, Oct. 31, 2011) – March 12:21

Termination of juvenile offender's duty to register as sex offender, based in part on recommendation of treatment provider, is equivalent procedure to a "certificate of rehabilitation" based on a finding of rehabilitation under RCW 9.41.040(3) entitling juvenile to restoration of firearms rights. State v. RPH, 173 Wn.2d 199 (Dec. 1, 2011) – April 12:14

Court affirms conviction for making a false statement with respect to information required to be kept by a federally licensed firearms dealer where defendant answered that he was the actual buyer of firearms, when he was not. United States v. Johnson, 680 F.3d 1140 (9th Cir., May 29, 2012) – September 12:05

Machine guns are "dangerous and unusual weapons" that are unprotected by the Second Amendment. United States v. Henry, 688 F.3d 637 (9th Cir., Aug. 9, 2012) – December 12:11

Backseat passenger's mere proximity to weapon and knowledge of weapon's presence is insufficient to convict defendant of unlawful possession of a firearm based upon constructive possession. State v. Chouinard, 169 Wn. App. 895 (Div. II, Aug. 8, 2012) – December 12:20

FISH AND WILDLIFE CRIMES (Title 77 RCW)

RCW 77.15.570: Non-Indian husband fishing alone on "usual and accustomed" fishing place of Indian tribe was "assisting" his Indian wife, who was at home, in exercising her fishing rights. State v. Guidry, 153 Wn. App. 774 (Div. II, 2009) – April 10:22

Wildlife trafficking statute held not to contain value-aggregation rule. State v. Yon, 159 Wn. App. 195 (Div. III, December 28, 2010) – May 11:20

FORCE USED BY LAW ENFORCEMENT (See "Civil Liability" topic)

FORFEITURE LAW (See also "Uniform Controlled Substances Act" topic)

No attorney fee award in drug forfeiture case – family of deceased was not "prevailing party" where family won as to car and $9342 in cash, but lost as to another $57,990 in cash. Guillen v. Contreras, 147 Wn. App. 326 (Div. III, 2008) – January 09:22 Note: The Washington Supreme Court reversed the Court of Appeals; see entry below this topic.

Drug forfeiture statute: "Knowledge" for purposes of "innocent owner" claim to property gets narrow, anti-government interpretation. In the Matter of the Forfeiture of One 1970

Chevrolet Chevelle and In the Matter of the Forfeiture of One 2004 Nissan Sentra, 166 Wn.2d 834 (2009) – October 09:12

No "innocent owner" claim is available to estate where marijuana grower's residential property was seized prior to his death. Snohomish Regional Drug Task Force v. Real Property Known As 414 Newberg, 151 Wn. App. 743 (Div. I, 2009) – October 09:21

"In pari delicto" theory justifies government's retention of money that criminal paid for documents in sting. Kardoh v. United States, 572 F.3d 697 (9th Cir., July 10, 2009) – November 09:10

Claimants in RCW 69.50.505 drug forfeiture cases may recover attorney fees even if they are only fractionally successful in their challenges. Guillen v. Contreras, 169 Wn.2d 769 (2010) – November 10:12

City ordinance held lawful in mandating "holds" of vehicles impounded after arrests for certain specified offenses. City of Kent v. Mann, 161 Wn. App. 126 (Div. I, April 11, 2011) – July 11:24

FORGERY (RCW 9A.60.020), FRAUD AND SIMILAR OR RELATED CRIMES

Evidence held sufficient to support conviction for unlawfully possessing fictitious identification. State v. Tinajero, 154 Wn. App. 745 (Div. III, 2009) – August 10:22

Evidence held sufficient to convict defendant of forgery where fake social security card and fake permanent resident card were seized from defendant after he shoplifted from a store. State v. Vasquez, 166 Wn. App. 50 (Div. III, Jan. 24, 2012) – August 12:22 Note: The Washington Supreme Court reversed the Court of Appeals; see entry below this topic.

Mere possession is insufficient evidence that defendant possessed fake social security card and fake permanent resident card with intent to injure or defraud, and thus insufficient evidence to convict defendant of forgery. State v. Vasquez, 178 Wn.2d 1, 2013 WL 3864265 (July 25, 2013) – October 13:16

FREEDOM OF RELIGION (FIRST AMENDMENT)

Parolee is entitled to damages based on First Amendment religion violation for being required, as a condition of parole, to attend a faith-based drug treatment program that required that he acknowledge a higher power. Hazle v. Crofoot, 727 F.3d 983 (9th Cir., Aug. 23, 2013) – November 13:15

FREEDOM OF SPEECH (FIRST AMENDMENT)

Case must go to trial on issue of whether officer violated First Amendment when he ordered voter-registrant/signature-gatherer to move her table from a public sidewalk where a specially permitted "cook-off" was being held by a private business. Dietrich v. John Ascuaga's Nugget, 548 F.3d 892 (9th Cir., Dec. 1, 2008) – March 09:09

Free speech: Seattle's parade ordinance that limits marching in the street held to give police chief too much discretion. Seattle Affiliate Of The October 22nd Coalition To Stop Police Brutality, Repression And Criminality Of A Generation v. City of Seattle, 550 F.3d 788 (9th Cir., Dec. 12, 2008) – March 09:09

Library filter for adults using internet held not violative of Washington constitution's article I, section 5. Bradburn v. N.C. Reg. Lib. Dt., 168 Wn.2d 789 (2010) – July 10:20

"True threat" requirement of First Amendment free speech protection requires special jury instruction in harassment prosecution. State v. Schaler, 169 Wn.2d 274 (July 29, 2010) – May 11:10

County noise ordinance, prohibiting honking of a vehicle horn except for a public safety purpose or originating from an officially sanctioned parade or other public event, was impermissibly overbroad, in violation of free speech protections of federal and state constitutions. State v. Immelt, 173 Wn.2d 1 (Oct. 27, 2011) – February 12:10

Threat to expose public servant's wrongdoing unless money is paid is not First Amendment protected speech. State v. Strong, 167 Wn. App. 1 (Div. III, March 15, 2012) – September 12:23

Federal Stolen Valor Act, which prohibits falsely claiming to be a recipient of military decorations or medals, violates First Amendment free speech protections. United States v. Alvarez, ___ U.S. ___, 132 S. Ct. 2537 (June 28, 2012) – October 12:03

Qualified immunity denied to assistant police chief who allegedly retaliated against a clerical worker for her subpoenaed deposition testimony, on behalf of a former employee, in that former employee's lawsuit claiming a First Amendment free speech violation. Karl v. City of Mountlake Terrace, 678 F.3d 1062 (9th Cir., May 8, 2012) – November 12:03

Disclosure by police officer of allegedly abusive interrogation tactics was made in the course of his official duties and thus not protected by the First Amendment free speech clause; lawsuit based on retaliation for officer's reporting must be dismissed. Dahlia v. Rodriguez, 689 F.3d 1094 (9th Cir., Aug. 7, 2012) – November 12:08 Note: The Ninth Circuit ordered rehearing en banc. January 13:06 Status: The en banc decision (not reported in the LED) has been issued and can be found at Dahlia v. Rodriguez, ___ F.3d ___, 2013 WL 4437594 (9th Cir., Aug. 21, 2013).

"Disruptive behavior" element of otherwise overbroad ordinance on city council meeting behavior saves ordinance from free speech challenge; qualified immunity for arrest is granted based on probable cause to arrest; no excessive force found. Acosta v. City of Costa Mesa, 694 F.3d 960 (9th Cir., Sept. 5, 2012) – December 12:09 Note: On February 25, 2013, the 3-judge panel withdrew its September 5, 2012 opinion and ordered a rehearing of the appeal; see entry below this subtopic for revised 9th Circuit opinion, reported in July 2013 LED.

No First Amendment protection for false anthrax mailings. United States v. Keyser, 704 F.3d 631 (9th Cir., Dec. 6, 2012) – March 13:04

"Disruptive behavior" element of otherwise overbroad ordinance on city council meeting behavior does not save ordinance from free speech challenge in light of the court doctrine regarding severance; but qualified immunity granted to officers based on rulings of probable cause to arrest and no excessive force. Acosta v. City of Costa Mesa, 718 F.3d 800 (9th Cir., May 3, 2013) – July 13:12

Threatening statements made by student are not entitled to free speech protection. Wynar v. Douglas County School Dist., 728 F.3d 1062 (9th Cir., Aug. 29, 2013) – November 13:12

Evidence held sufficient (1) to establish "true threat" in email communications to Governor and (2) to convict defendant of making threats against the Governor and her family. State v. Locke, 175 Wn. App. 779 (Div. II, Aug. 6, 2013) – November 13:17

GAMBLING (Chapter 9.46 RCW)

Prohibition of internet gambling does not violate commerce clause of federal constitution. Rousso v. State of Washington, 149 Wn. App. 344 (Div. I, 2009) – May 09:23 Note: The Washington Supreme Court affirmed this decision; see entry below this topic.

"Honor-based" internet betting service is not engaged in: (1) "gambling" because the service requires all users to agree that all bets are non-binding; or (2) "bookmaking" because the service does not take a position on the bets. Internet Community & Entertainment Corp. v. State of Washington, 148 Wn. App. 795 (Div. II, 2009) – May 09:23 Note: The Washington Supreme Court reversed this decision; see entry below this topic.

Supreme Court disagrees with Court of Appeals and holds that "honor-based" internet betting service is engaged in "bookmaking" and "professional gambling" even though service requires all users to agree that all bets are non-binding, and even though service does not take a position on the bets. Internet Community & Entertainment Corp. v. State of Washington, 169 Wn.2d 687 (2010) – October 10:16

RCW 9.46.240's ban on internet gambling does not violate Federal Constitution's Dormant Commerce Clause. Rousso v. State of Washington, 170 Wn.2d 70 (Sept. 23, 2010) – February 11:05

GOVERNMENTAL MISMANAGEMENT OF PROSECUTION

Robbery and other charges dismissed for government mismanagement of case and for discovery violations. State v. Brooks, 149 Wn. App. 373 (Div. I, 2009) – May 09:22

HARASSMENT (Chapter 9A.46 RCW) (See also "Malicious Harassment" and "Telephone Harassment" topics)

Defendant's challenges to his telephone harassment convictions for voicemail message to police officer rejected. State v. Alphonse, 147 Wn. App. 891 (Div. I, 2008) – March 09:23

Arrestee's statement from back seat of patrol car that he "would kick [officer's] ass if [he] wasn't in handcuffs," plus other facts, held to support his harassment conviction; vehicle-search-incident challenge held waived because defendant did not raise theory in trial court. State v. Cross, 156 Wn. App. 568 (Div. II, 2010) – September 10:16

"True threat" requirement of First Amendment free speech protection requires special jury instruction in harassment prosecution. State v. Schaler, 169 Wn.2d 274 (July 29, 2010) – May 11:10

HEALTH INFORMATION PRIVACY

Washington State Hospital Association issues 2010 edition of Guide to Disclosure of Protected Health Information. – October 10:03

IDENTIFICATION PROCEDURES: PHYSICAL LINEUPS, PHOTO LINEUPS, AND SHOWUPS

Identification testimony by eyewitness bank teller in robbery trial held admissible despite fact that the witness again saw the defendant in a courtroom hallway in handcuffs shortly before she testified. State v. Birch, 151 Wn. App. 504 (Div. III, 2009) – October 09:18

Law enforcement articles on (1) Miranda initiation of contact and (2) identification procedures have been updated on the Criminal Justice Training Commission's internet LED page. – November 10:03

Show-up ID procedure where suspected cocaine buyer ID'd suspected street cocaine seller shortly after their transaction was not unduly suggestive. State v. Fortun-Cebada, 158 Wn. App. 158 (Div. I, Oct. 25, 2010) – January 11:15

United States Supreme Court holds that where officers did not purposely stage what inadvertently turned out to be "showup" identification of suspect, constitutional due process protections against suggestive ID procedures were not triggered. Perry v. New Hampshire, ___ U.S. ___, 132 S. Ct. 716 (Jan. 11, 2012) – March 12:02

Failure of victim to identify defendant in photo montage she was shown near time of crime does not preclude her identification of him at trial where no police irregularity alleged. State v. Salinas, 169 Wn. App. 210 (Div. I, July 2, 2012) – October 12:17

Defendant loses challenge to eyewitness identification testimony, both (1) because detective acted reasonably and (2) because police were not responsible for viewing by witness of defendant in media reports. State v. Sanchez, 171 Wn. App. 518 (Div. III, Oct. 30, 2012) – January 13:21

Washington Supreme Court declines to adopt a blanket rule requiring cross-racial eyewitness identification instruction. State v. Allen, 176 Wn.2d 611 (Feb. 8, 2013) – March 13:12

IDENTITY THEFT (Chapter 9.35 RCW)

Corporation qualifies as a "person" for purposes of identity theft statutes. State v. Evans, 164 Wn. App. 629 (Div. II, Nov. 1, 2011) – February 12:14 Note: The Washington Supreme Court affirmed this decision; see entry below this topic.

Corporation is "person" for purposes of identity theft; court rejects vagueness challenge. State v. Evans, 177 Wn.2d 186 (April 11, 2013) – June 13:25

IMMIGRATION LAW

Much of Arizona immigration law held preempted by federal law. Arizona v. United States, ___U.S. ___, 132 S. Ct. 2492 (June 25, 2012) – August 12:04

IMPLIED CONSENT, BREATH AND BLOOD TESTS FOR ALCOHOL (RCW 46.20.308)

Search warrant for blood alcohol test of DUI suspect may be obtained after the suspect has declined a voluntary test of breath or blood. City of Seattle v. St. John, 166 Wn.2d 941 (2009) – October 09:10

DUI defendant loses argument that implied consent warnings must advise of certain things not specified in statutory warning. State v. Elkins, 152 Wn. App. 871 (Div. I, 2009) – April 10:22

Enrolled member of Yakama Nation who drove car on public highway on Yakama Reservation – until he veered off into a canal – is subject to blood draw requirement of the implied consent statute, RCW 46.20.308. State v. Yallup, 160 Wn. App. 500 (Div. III, March 10, 2011) – May 11:24

Commercial Driver's License (CDL) language in implied consent warnings, given to drivers who hold a CDL and are stopped while driving their personal vehicles, is not misleading or inaccurate and did not result in actual prejudice to CDL driver. Lynch v. Department of Licensing, 163 Wn. App. 697 (Div. II, August 14, 2011; publication ordered Sept. 27, 2011) – February 12:21

State's failure to prove interpreter gave correct implied consent warnings requires reversal of convictions based on blood draw. State v. Morales, 173 Wn.2d 560 (Jan. 26, 2012) – April 12:13

Commercial driver's license (CDL) language in implied consent warnings, given to drivers who hold a CDL and are stopped while driving their personal vehicles, did not inaccurately or misleadingly imply that CDL disqualification would be for same length of time as the suspension or revocation of personal license. Allen v. Department of Licensing, 169 Wn. App. 304 (Div. I, July 2, 2012) – December 12:25

Commercial driver's license (CDL) language in implied consent warnings, given to drivers who hold a CDL and are stopped while driving their personal vehicles, is not inaccurate or misleading; statute requiring the Department of Licensing to continue a hearing where a CDL is at issue and officer does not appear does not violate due process or equal protection. Martin v. Department of Licensing, 175 Wn. App. 9 (Div. II, April, 30, 2013, publication ordered June 19, 2013) – September 13:18

There is no blanket requirement that the prosecution introduce a statement of uncertainty for each breath alcohol concentration (BAC) test in DUI cases. State v. King County District Court, West Division, 175 Wn. App. 630 (Div. I, July 29, 2013) – October 13:17

Note: Revised DUI arrest report forms. – November 13:03

INDECENT EXPOSURE (RCW 9A.88.010)

Indecent exposure conviction held to be supported by evidence that defendant was seen walking through neighborhood while nude except for shoes on his feet and a stocking cap on his skull, even though no witness saw his genitals. State v. Vars, 157 Wn. App. 482 (Div. I, Aug. 16, 2010) – February 11:20

INDIANS (NATIVE AMERICANS) AND LAW ENFORCEMENT

Tribal officers have authority to pursue non-Indian traffic law violators from reservation

and to make a stop off the reservation to hold for city, county or State agency officers. State v. Eriksen, 166 Wn.2d 953 (2009) – November 09:11 Note: The Washington Supreme Court reconsidered this case twice before settling on a final decision; see entry below this topic.

RCW 77.15.570: Non-Indian husband fishing alone on "usual and accustomed" fishing place of Indian tribe was "assisting" his Indian wife, who was at home, in exercising her fishing rights. State v. Guidry, 153 Wn. App. 774 (Div. II, 2009) – April 10:22

State has jurisdiction under RCW 37.12.010 to prosecute Indian tribe member who committed traffic crimes on highway on Indian reservation. State v. Abrahamson, 157 Wn. App. 672 (Div. I, 2010) – October 10:25

Tribal officers have inherent sovereign authority to pursue non-Indian traffic law violators from reservation, and they may make stops off the reservation to hold non-Indian DUI suspects for city, county or State officers. State v. Eriksen, 170 Wn.2d 209 (2010) – December 10:16 Note: The Washington Supreme Court reconsidered this case once more before settling on a final decision that rejected the analysis of the 2010 majority opinion; see entry below this topic.

Enrolled member of Yakama Nation who drove car on public highway on Yakama Reservation – until he veered off into a canal – is subject to blood draw requirement of the implied consent statute, RCW 46.20.308. State v. Yallup, 160 Wn. App. 500 (Div. III, March 10, 2011) – May 11:24

Court reverses its previous two opinions in this case and holds: Where a non-tribal member commits a traffic infraction on the reservation, tribal police officers do not have inherent authority to pursue the violator outside of the reservation, stop the vehicle, and, upon observing signs of intoxication, detain the driver while waiting for city, county or State law enforcement to arrive. State v. Eriksen, 172 Wn.2d 506 (Sept. 1, 2011) – November 11:04

Where evidence being sought relates to off-reservation offense over which State has jurisdiction, State courts have authority to issue search warrant for residence located on trust property within exterior boundaries of established Indian reservation. State v. Clark, 167 Wn. App. 667 (Div. III, April 12, 2012) – September 12:22 Note: The Washington Supreme Court affirmed under more qualified analysis; see entry below this topic.

Issuance and execution of search warrant on tribal trust land did not infringe on tribal sovereignty where State had jurisdiction over theft occurring on fee land within the borders of Indian reservation, and where no federal statute or tribal procedural restriction applies. State v. Clark, 178 Wn.2d 19 (July 25, 2013) – October 13:14

INITIATIVE POWER OF MUNICIPALITIES

Automated traffic safety cameras are not a proper subject of initiative power of cities. Mukilteo Citizens for a Simple Government v. City of Mukilteo, 174 Wn.2d 41 (Mar. 8, 2012) – June 12:21

Although city clerks have a mandatory duty to transmit ordinance to the county auditor, the court denies action seeking to compel city clerk to do so because it would have been useless under the facts of this case (traffic camera initiative). Eyman v. McGehee, 173 Wn. App. 684 (Div. I, Feb. 19, 2013) – July 13:25

INSANITY (RCW 9A.12.010)

Evidence of knowledge of wrongfulness held sufficient to support jury's rejection of paranoid schizophrenic murderer's insanity defense. State v. Chanthabouly, 164 Wn. App. 104 (Div. II, Sept. 27, 2011) – March 12:23

INTERROGATIONS AND CONFESSIONS (See also "Sixth Amendment Right to Counsel" and "Criminal Rule 3.1" topics)

No "custody" and hence no need for Miranda warnings to suspected child molester who came to station voluntarily for polygraph; also, hearsay re out-of-court statement of six-year-old (who died before trial) determined reliable. State v. Grogan, 147 Wn. App. 511 (Div. III, 2008) – January 09:11

Warrantless emergency home search to look for child sex victim ok, as was protective sweep, but follow-up warrantless entry and pre-warrant walk-through not ok; also, detective's post-Miranda-invocation statements to suspect: 1) telling suspect that officer would be seeking a search warrant, and 2) stating age of victim were not "interrogation," so incriminating response was volunteered. State v. Sadler, 147 Wn. App. 97 (Div. I, 2008) – January 09:18

Custodial suspect's ambiguous statements regarding his attorney's advice did not constitute invocation of Miranda rights. Sechrest v. Ignacio, 549 F.3d 789 (9th Cir., Dec. 5, 2008) – February 09:02

Confession by inexperienced 17-year-old suspect in mass murder case held involuntary where the 4 questioning officers: (1) chose not to involve his parents, (2) downplayed the Miranda warnings, (3) questioned him through the night for 12 hours straight, (4) for an extended period continued asking him essentially the same questions despite his silence, and (5) told him numerous times that he "had to" answer their questions. Doody v. Shriro, 548 F.3d 847 (9th Cir., Nov. 20, 2008) – March 09:04 Note: The Ninth Circuit withdrew the November 20, 2008 decision and an 11-judge panel issued a new decision; see entry below this topic.

Even though interrogating officer's promise to suspect that the suspect would not be charged with vandalism was not proper, that fact alone did not make the suspect's confession involuntary. State v. Unga, 165 Wn.2d 95 (2008) – March 09:15

2-1 majority rules in a "close case" that there was no Miranda custody in questioning of suspect at his place of work. United States v. Bassignani, 560 F.3d 989 (9th Cir., March 25, 2009) – May 09:10

Sixth Amendment initiation-of-contact rule of Michigan v. Jackson is eliminated in a 5-4 decision. Montejo v. Louisiana, 556 U.S. 778 (2009) – July 09:15

Informant-based reasonable suspicion standard of Terry v. Ohio met to justify seizure of drug suspect; also, Miranda warnings were not required before Terry stop questioning. State v. Marcum, 149 Wn. App. 894 (Div. I, 2009) – August 09:17

14-year-old rape suspect who was questioned with his mother present in his neighbor's bedroom was not in Miranda custody; Court of Appeals also rules that victim was competent to testify. State v. S.J.W., 149 Wn. App. 912 (Div. I, 2009) – August 09:22

Section 1983 civil rights lawsuit: Court holds that detective should not have relied on uncorroborated marginal story of four-year-old child as probable cause to arrest molestation suspect; also, court remands to district court to consider detective's alleged promises of leniency to allegedly mentally and emotionally challenged juvenile suspect. Stoot v. City of Everett, 582 F.3d 910 (9th Cir., Aug. 13, 2009) – October 09:08 Note: Amended decision reported at 582 F.3d 910 (9th Cir., Sept. 18, 2009) but not in the LED – none of the amendments were of significance.

Booking exception to Miranda warnings requirement held not applicable in case where booking was for possession of illegal drugs, and jail employee's question asked about recent drug usage. State v. Denney, 152 Wn. App. 665 (Div. II, 2009) – March 10:21

Fifth Amendment initiation-of-contact rule clarified: (1) bright-line, 14-day-break-in-custody rule created to set boundary for police-initiated, subsequent attempt at custodial interrogation after attorney-right asserted by custodial suspect; (2) the new 14-day standard includes convicted and sentenced prisoners immediately returned to general prison or jail population after asserting right to attorney during custodial interrogation. Maryland v. Shatzer, ___U.S. ___,130 S.Ct. 1213 (Feb. 24, 2010) – April 10:03

Tampa PD's Miranda warning held to adequately convey right of suspect to have attorney present during questioning. Florida v. Powell, ___U.S. ___, 130 S. Ct. 1195 (Feb. 23, 2010) – April 10:06

Arguable ambiguity in Vancouver PD's juvenile Miranda warning does not negate juvenile's waiver of his Miranda rights. State v. Campos-Cerna, 154 Wn. App. 702 (Div. II, 2010) – April 10:19

Where custodial defendant understood lawful Miranda warnings, his silence at the outset of questioning and throughout much of nearly-three-hour interrogation session did not make inadmissible his confession that came near the end of the session; his waiver was implied in his confession and at no point had he invoked his Miranda rights. Berghuis v. Thompkins, ___U.S. ___,130 S. Ct. 2250 (2010) – July 10:02

Civil Rights Act liability based on Fifth Amendment violation: California officers used unlawful coercion when they told 14-year-old during custodial interrogation that, if he confessed, he would get treatment, but if he did not confess, he would get jail. Crowe v. County of San Diego, 608 F.3d 406 (9th Cir., June 18, 2010) – September 10:05

Mirandized suspect's refusals to demonstrate how his purportedly "accidental" shooting of his estranged wife occurred were inadmissible "selective" assertions of his right to silence. Hurd v. Terhune, 619 F.3d 1080 (9th Cir., Aug. 23, 2010) – October 10:04

Law enforcement articles on (1) Miranda initiation of contact and (2) identification procedures have been updated on the Criminal Justice Training Commission's internet LED page. – November 10:03

Deliberate 2-step interrogation method without curative warning at Step 2 held to violate the Miranda rule of Missouri v. Seibert. State v. Hickman, 157 Wn. App. 767 (Div. II, 2010) – November 10:14

Officer's initiation of contact with continuous-custody suspect who had asserted right to silence two hours earlier upheld under Michigan v. Mosley/Miranda initiation-of-contact rule; officer's initiation of contact related to a different crime than was the subject of the earlier contact, and he re-Mirandized the suspect before questioning him as to the other crime. State v. Brown, State v. Duke, 158 Wn. App. 49 (Div. III, 2010) – December 10:18

Arrestee who had initially invoked his right to an attorney under Criminal Rule 3.1 held to have waived that right where he initiated a conversation with officers and made volunteered statements. State v. Mullins, 158 Wn. App. 360 (Div. II, Nov. 1, 2010) – January 11:20

Standing, Miranda, scope-of-stop, and spousal privilege issues addressed in pro-state rulings in case where officer asked female driver protected by a no-contact order to identify male passenger. State v. Shufelen, 150 Wn. App. 244 (Div. I, April 13, 2009) – February 11:15

Defendant's Terry, Miranda, consent, and curtilage arguments rejected in case involving officers' investigation of previous evening's gunfire at campsite on national forest service land. United States v. Basher, 629 F.3d 1161 (9th Cir., Jan. 20, 2011) – April 11:02

Deliberate two-step interrogation method without curative warning at step two violates Miranda rule of Missouri v. Seibert. Thompson v. Runnels, 621 F.3d 1007 (9th Cir. Sept. 8, 2010) – March 11:06 Note: Opinion withdrawn and superseded on denial of rehearing en banc, 657 F.3d 784 (9th Cir., June 9, 2011) **Dec 11 LED:19;** see entry below this topic.

Officer's testimony that defendant was "evasive" during interrogation did not violate Fifth Amendment right to silence; but remark did violate Sixth Amendment by invading province of jury; that error, however, was cured by timely trial court jury instruction. State v. Hager, 171 Wn.2d 151 (May 10, 2011) – May 11:09

Miranda "custody" test: Where an officer knows or should reasonably know that the suspect being questioned is a juvenile, the suspect's age is an objective factor that must be considered – the question is how a typical juvenile of that age would perceive the detention. J.D.B. v. North Carolina, ___U.S. ___, 131 S. Ct. 2394 (June 16, 2011) – August 11:03

Confession by inexperienced 17-year-old suspect in mass murder case again held involuntary by majority of Ninth Circuit where, among other things, (1) officers significantly downplayed the Miranda warnings, (2) questioned the suspect through the night for 12 hours straight, (3) for an extended period continued asking him essentially the same questions over and over despite his silence, and (4) told him numerous times that he "had to" answer their question. Doody v. Ryan, 649 F.3d 986 (9th Cir., May 4, 2011) – September 11:05

Defendant's custodial statements were voluntary even though she may not have understood the full consequences of her decision to talk to detectives. State v. Curtiss, 161 Wn. App. 673 (Div. II, May 6, 2011) – September 11:22

Detectives' conversation with defendant regarding his suspected new crime committed while in jail held not to violate Washington Constitution's provision protecting right to counsel. State v. Hahn, 162 Wn. App. 885 (Div. II, Aug. 3, 2011) – November 11:20

Order denying petition for panel rehearing and rehearing en banc revises previous opinion ever so slightly in Ninth Circuit Miranda-Seibert 3-judge panel opinion. Thompson v. Runnels, 657 F.3d 784 (9th Cir., June 9, 2011) – December 11:19

Polygrapher's maternal questioning style, her references to "the cops," and her other tactics to put suspect at ease and convince him to tell the truth did not render his confession involuntary. Ortiz v. Uribe, 671 F.3d 863 (9th Cir., Nov. 18, 2011) – March 12:07

Special Miranda warning to juveniles about the possibility of adult court prosecution held not absolutely required, but giving the special warning is always the best practice with juveniles. State v. Miller, 165 Wn. App. 385 (Div. III, Dec. 8, 2011) – April 12:25

Considering all the circumstances, including fact that suspect Fields was told at start and later that he was free to leave at any time and return to his jail cell, Fields was not in custody for Miranda purposes – and therefore Miranda warnings and waiver were not required – where officers had him removed from his cell and questioned him about uncharged offenses allegedly committed prior to his incarceration. Howes v. Fields, ___ U.S. ___, 132 S. Ct. 1181 (Feb. 21, 2012) – June 12:10

Mirandized suspect held to have made an "unequivocal" request for an attorney during custodial interrogation such that questioning should have stopped; State's context-based argument is rejected. State v. Nysta, 168 Wn. App. 30 (Div. I, May 7, 2012) – July 12:09 Status: The Washington Supreme Court denied the State's petition for review.

Washington Supreme Court overrules State v. Davis and holds that statements to police are not inadmissible at trial merely because State fails, without explanation, to call a second police officer to corroborate defendant's waiver of Miranda rights. State v. Abdulle, 174 Wn.2d 411 (May 3, 2012) – July 12:06

Three Miranda holdings in November 2011 United States Supreme Court decision: (1) Missouri v. Seibert's bar against admission of all statements obtained in intentional 2-step law enforcement attempt to finesse Miranda is distinguished on facts of this case; (2) urging a properly Mirandized suspect to make a deal before his accomplice does is lawful, not improper coercion; and (3) suspect's attempt to anticipatorily invoke Miranda rights during non-custodial questioning will not bar later police contact to obtain waiver for questioning. Bobby v. Dixon, ___ U.S. ___, 132 S. Ct. 26 (2011) – August 12:05

Double-murder defendant wins argument that (1) he unequivocally asserted his right under Criminal Rule 3.1 to attorney contact, and (2) he was not given reasonable assistance to make such contact. State v. Pierce, 169 Wn. App. 533 (Div. II, July 17, 2012) – October 12:13

By 6-5 vote, a Ninth Circuit panel rules (despite the habeas standard that is highly deferential to State court rulings) that a custodial suspect's question about availability of an attorney and his statement that his father had advised him to ask for an attorney – uttered to detectives before they gave him Miranda warnings – prior to any waiver of Miranda rights should have been ruled by the California appellate court as either: (1) an ambiguous reference to his attorney right that must be honored as a preemptive Miranda request for an attorney terminating any attempt at interrogation and also precluding clarification; or (2) an unambiguous reference to his Miranda attorney right that likewise precludes interrogation or an attempt by officers to clarify. Sessoms v. Runnels, 691 F.3d

1054 (9th Cir., Aug. 16, 2012) – November 12:06 Status: The California Attorney General's Office filed a petition seeking United States Supreme Court review; on June 27, 2013, the United States Supreme Court granted review, vacated the Ninth Circuit judgment, and remanded the case to the Ninth Circuit for reconsideration of its decision in light of the United States Supreme Court's decision in Salinas v. Texas, ___ U.S. ___, 133 S. Ct. 2174 (June 17, 2013) August 13:02; see entry regarding U.S. Supreme Court remand order below, this topic, reported as Grounds v. Sessoms, ___U.S. ___, 133 S. Ct. 2886 (June 27, 2013) September 13:04

Suspect's statement during interrogation that "I don't want to talk right now, man" must be viewed in context of what was said and done before that, and was merely his way of saying he was choosing to make a police-aided written statement over making a tape-recorded statement. State v. Piatnitsky, 170 Wn. App. 195 (Div. I, Aug. 20, 2012) – November 12:11 Status: The Washington Supreme Court is reviewing the case.

Suspect's selective silence at various points during interrogation cannot be used against him at trial except for impeachment purposes. State v. Fuller, 169 Wn. App. 797 (Div. II, Aug. 8, 2012) – December 12:21

Habeas corpus review: Because the rule for habeas corpus review does not allow prisoner to raise the 2004 Missouri v. Seibert decision regarding use of an improper two-step Mirandizing process, Ninth Circuit panel revises its earlier ruling that was based on Seibert. Thompson v. Runnels, 705 F.3d 1089 (9th Cir., Jan. 24, 2013) – March 13:03

Miranda-based initiation-of-contact bar was not triggered where suspect in continuous custody asserted right to attorney under Canadian "charter" to Canadian officers who were not agents of Washington officers, so Washington officers lawfully got Miranda waiver. State v. Trochez-Jimenez, 173 Wn. App. 423 (Div. I, Feb. 12, 2013) – April 13:19 Status: The Washington Supreme Court is reviewing the case.

Habeas corpus review standard requires rejection of prisoner's argument that she was in custody for purposes of Miranda when interrogated for nearly four hours in the dead of night at a police station located thirty minutes from her home. Dyer v. Hornbeck, 705 F.3d 1134 (9th Cir., Feb. 6, 2013) – May 13:12

Confession of mildly mentally retarded suspect is not involuntary under the facts of this case. United States v. Preston, 706 F.3d 1106 (9th Cir., Feb. 5, 2013) – May 13:14 Status: On August 14, 2013, the Ninth Circuit vacated the February 5, 2013 opinion in United States v. Preston, and the case will now be reviewed by an 11-judge panel, and a new opinion will be issued.

After waiving his Miranda rights, suspect did not unambiguously invoke his right to attorney during questioning when he responded as follows to a detective's statement that officers had probable cause – "I mean I guess I'll just have to talk to a lawyer about it and, you know, I'll mention that you guys are down here with a story." State v. Gasteazoro-Paniagua, 173 Wn. App. 751 (Div. II, Feb. 20, 2013) – May 13:19

Under particular circumstances of case, re-advising arrestee of her Miranda rights after she invoked her attorney right, plus processing her in the presence of 77 marijuana bricks and photographing her with those bricks, did not constitute re-initiation of interrogation in violation of Miranda. United States v. Morgan, 717 F.3d 719 (9th Cir., June 3, 2013) – July 13:04 Note: On July 15, 2013, the same panel issued an amended opinion that

did not change the result or materially change the analysis. See ___ F.3d___, 2013 WL 3491418 (9th Cir., July 15, 2103) – October 13:13

Ninth Circuit holds that 1) actions by FBI agents at parole office add up to custody for purposes of Miranda, and 2) they breached Missouri v. Seibert rule by taking a deliberate two-step approach to Mirandizing. United States v. Barnes, 713 F.3d 1200 (9th Cir., April 18, 2013) – July 13:07

Un-Mirandized suspect's selective silence with no express assertion of Fifth Amendment rights during non-custodial and otherwise non-coercive questioning by government investigators may be used against defendant in a criminal prosecution. Salinas v. Texas, ___ U.S. ___, 133 S. Ct, 2174 (June 17, 2013) – August 13:02

Supreme Court directs Ninth Circuit to reconsider ruling in Sessoms v. Runnels that pre-Miranda statement by custodial suspect about attorney right either: (1) constituted invocation of Miranda rights even if ambiguous, or (2) was an unambiguous assertion of his attorney right. Grounds v. Sessoms, ___U.S. ___, 133 S. Ct. 2886 (June 27, 2013) – September 13:04

Review by 11-judge panel ordered in case where voluntariness of a confession by a mildly mentally challenged suspect is at issue. On August 14, 2013, the Ninth Circuit vacated the opinion in United States v. Preston, 706 F.3d 1106 (9th Cir., Feb. 5, 2013) – October 13:07

Voluntary statement about fear of reprisal that custodial suspect made in interrogation that officers improperly continued after he had invoked his right to silence is held admissible to impeach his trial testimony that he was an unknowing courier of illegal drugs. United States v. Gomez, 725 F.3d 1121 (9th Cir., Aug. 6, 2013) – October 13:08

Spanish-language Miranda warnings that used an incorrect translation of "free" failed to "reasonably convey" suspect's Miranda right to an attorney without cost. United States v. Botello-Rosales, 728 F.3d 865 (9th Cir., July 15, 2013) – October 13:12

Miranda custody issue: Under totality of circumstances, questioning in suspect's residence was not so coercive as to be "custodial." State v. Rosas-Miranda, ___Wn. App. ___, 709 P.3d 728 (Div. II, Sept. 17, 2013) – December 13:20

INTIMIDATING A PUBLIC SERVANT (RCW 9A.76.180)

Evidence of attempt-to-influence element of "intimidating a public servant" held sufficient to prosecute man threatening to "kick [arresting officer's] ass." State v. Montano, 147 Wn. App. 543 (Div. III, 2008) – February 09:18 Note: The Washington Supreme Court granted review and reversed; see entry below this topic.

Evidence of intent-to-influence-official-action element of RCW 9A.76.180 held insufficient to support charge. State v. Montano, 169 Wn.2d 872 (2010) – November 10:09

Split court holds that aunt's use of her car to interfere with officer's attempt to pull over her nephew constituted assault in the second degree, but it did not constitute intimidating a public servant. State v. Toscano, 166 Wn. App. 546 (Div. III, Feb. 7, 2012) – September 12:24

Drunken tirade that includes expletives and threats to officer is insufficient under facts of this case to establish intimidating a public servant because evidence fails to establish attempt to influence his action. State v. Moncada, 172 Wn. App. 364 (Div. III, Dec. 11, 2012) – March 13:23

JAILS AND PRISONS

Civil Rights Act decision: Federal act protecting religion in institutions applies to county courthouse holding facility, so United States District Court must address whether act was violated by ordering Muslim woman to remove headscarf. Khatib v. County of Orange, 639 F.3d 898 (9th Cir., March 15, 2011) – September 11:06

County jails might be required to distribute unsolicited publication (Crime, Justice & America) to inmates. Hrdlicka v. Reniff, 631 F.3d 1044 (9th Cir., Jan. 31, 2011) – October 11:09

JUVENILES (Title 13 RCW)

Juvenile court has authority to issue a domestic violence no contact order for the statutory maximum time period, even if the result is that the no contact order will remain in effect beyond the juvenile's eighteenth birthday. State v. W.S., ___ Wn. App. ___, 309 P.3d 589 (Div. I, Aug. 19, 2013) – October 13:21

KIDNAPPING, UNLAWFUL IMPRISONMENT AND RELATED OFFENSES (Chapter 9A.40 RCW)

RCW 9A.40.060(2)'s phrase, "court-ordered parenting plan," receives pro-State interpretation in custodial interference case. State v. Veliz, 160 Wn. App. 396 (Div. III, March 8, 2011) – May 11:22 Note: The Washington State Supreme Court reversed the Court of Appeals decision; see entry below this topic.

Evidence is held insufficient to support kidnapping in the first degree conviction where would-be child victim voluntarily entered defendant's car and apartment, and where defendant took the victim home when victim requested. State v. Dillon, 163 Wn. App. 101 (Div. II, Aug. 9, 2011) – February 12:24

No contact order that contains visitation provision is not a "parenting plan" for purposes of custodial interference. State v. Veliz, 176 Wn.2d 849 (March 7, 2013) – June 13:22

LEGISLATIVE UPDATES FOR WASHINGTON

2009: Part One – May 09:03; **Part Two** – June 09:01; **Part Three** – July 09:02; **Year 2009 Washington Legislative Update Index** – July 09:12

2010: Part One – May 10:02; **Part Two** – June 10:02; **Year 2010 Washington Legislative Update Index** – June 10:08

2011: Part One – June 11:01; **Part Two** – July 11:02; **Year 2011 Washington Legislative Update Index** – July 11:16-19

2012: Part One – May 12:02; **Part Two** – June 12:02; **Year 2012 Washington Legislative Update Index** – June 12:04

Initial information about Initiative 502 relating to marijuana. – January 13:03

Notes informing that the LED's 2013 Washington legislative update will be presented in a stand-alone document appearing on the CJTC LED Internet page around mid-July 2013. – April 13:03; May 13:03; June 13:02; July 13:02; August 13:02

2013 Legislative Update

Initiative 502 initial draft rules released – August 13:02

Initiative 502 final rules adopted – December 13:02

LIMITATIONS PERIODS (RCW 9A.04.080)

RCW 9A.04.080(2), statute of limitations: The phrase, "during any time when the person charged is not usually and publicly resident within this state," does not toll the statute of limitations for persons while they are in jail in Washington. State v. Walker, 153 Wn. App. 701 (Div. III, 2010) – April 10:19

Trip out of state for training did not toll statute of limitations. State v. Willingham, 169 Wn.2d 192 (2010) – September 10:14

Possession of stolen property is a continuing offense and statute of limitations runs from the date the defendant last possessed the property. State v. Contreras, 162 Wn. App. 540 (Div. III, July 7, 2011) – January 12:25

LOSS OF, DESTRUCTION OF, FAILURE TO PRESERVE EVIDENCE (See also topic, "Due Process, including Brady Requirements on Government")

In prosecution for Second Degree Theft, the fact that computer does not work is not material exculpatory evidence such that the State is required to preserve it. State v. Valdez, 158 Wn. App. 626 (Div. III, Nov. 18, 2010) – March 11:21

Where evidence in homicide investigation was destroyed after case went cold for thirty years, Court of Appeals holds there is no due process violation because evidence was not materially exculpatory, and there was no bad faith on the part of police in destroying the evidence. State v. Groth, 163 Wn. App. 548 (Div. I, Sept. 12, 2011) – February 12:15

Constitutional due process protection: When the government destroys evidence before trial, a showing of bad faith is required for dismissal but not for remedial adverse-inference jury instruction. United States v. Sivilla, 714 F.3d 1168 (9th Cir., May 7, 2013) – July 13:10

LURING (RCW 9A.40.090)

Split court holds that there was no enticement – and therefore it was not luring under RCW 9A.40.090 – for man riding by on bicycle to say to 9-year-old: "Do you want some candy? I've got some at my house". State v. Homan, 172 Wn. App. 488 (Div. III, Dec. 18, 2012) – March 13:13 Status: The Washington Supreme Court is reviewing the case.

MALICIOUS HARASSMENT (RCW 9A.36.080)

In malicious harassment prosecution, court holds that defendant intentionally and maliciously threatened the victim because of her race, and evidence is sufficient to establish a true threat. State v. Read, 163 Wn. App. 853 (Div. I, Sept. 19, 2011) – July 12:25

MALICIOUS MISCHIEF (Chapter 9A.48 RCW)

For purposes of malicious mischief statute "property of another" includes property in which the defendant possesses anything less than exclusive ownership. State v. Newcomb, 160 Wn. App. 184 (Div. II, Feb. 11, 2011) – November 11:24

Where defendant kicked out the back window of a police car, placing the car out of service for a day, there is sufficient evidence to convict him of malicious mischief in the second degree. State v. Turner, 167 Wn. App. 871 (Div. III, May 1, 2012) – September 12:21

MEDAL OF HONOR AND PEACE OFFICERS' MEMORIAL CEREMONY

Announcing Washington Law enforcement Medal of Honor & Peace Officers Memorial Ceremony is set for Friday, May 3, 2013 in Olympia at 1:00 p.m. – April 13:02; May 13:02

MEDICAL USE OF MARIJUANA ACT (Chapter 69.51A RCW) (See also topic "Uniform Controlled Substances Act")

For would-be medical marijuana caregiver, the necessary "Medical Use of Marijuana Act" documents must already exist at the time of first police contact, but the would-be caregiver need not have the documents on his or her person and need not present the documents at the time of that first police contact. State v. Adams, 148 Wn. App. 231 (Div. III, 2009) – March 09:18

User's "authorization form" re "Medical Use of Marijuana Act" does not stop search under a warrant (this time, at least). State v. Fry, 168 Wn.2d 1 (2009) – March 10:11

Washington's Medical Use of Marijuana Act ("MUMA") (Chapter 69.51A RCW) does not prevent an employer from discharging an employee for drug use and does not provide a private cause of action against the employer. Jane Roe v. TeleTec Customer Care Management (Colorado) L.L.C., 171 Wn.2d 736 (June 9, 2011) – August 11:16

Ninth Circuit denies preliminary injunctive relief, concluding that the use of medical marijuana is not protected by the Americans with Disabilities Act. James v. City of Costa Mesa, 684 F.3d 825 (9th Cir., May 21, 2012) – August 12:13

Defendant charged with manufacture and possession of marijuana should have been permitted to present an affirmative defense that he is a designated provider under the medical marijuana statute, chapter 69.51A RCW; 2011 amendments to the statute are not retroactive. State v. Brown, 166 Wn. App. 99 (Div. II, Jan. 24, 2012) – August 12:19

Court holds medical marijuana statute defense by commercial dispenser is valid under former statutory scheme. State v. Shupe, 172 Wn. App. 341 (Div. III, Dec. 11, 2012) – March 13:22

Common law medical necessity defense is not abrogated by chapter 69.51A RCW, Washington's Medical Use of Marijuana Act. State v. Kurtz, ___ Wn.2d ___, 309 P.3d 472 (Sept. 19, 2013) – December 13:20

MINOR IN POSSESSION (RCW 66.44.270)

Evidence held not sufficient to support possession element of minor in possession by consumption charge. State v. Francisco, 148 Wn. App. 168 (Div. III, 2009) – April 09:18

MUNICIPAL COURT AUTHORITY

State criminal statute that is not adopted by city or incorporated by reference in city's code may not be prosecuted in city's municipal court. City of Auburn v. Gauntt, 160 Wn. App. 567 (Div. I, March 14, 2011) – May 11:22 Note: The Washington State Supreme Court reversed; see entry below this topic.

City does not have authority to prosecute State law crimes that it has not adopted in its municipal code. City of Auburn v. Gauntt, 174 Wn.2d 321 (April 19, 2012) – July 12:09

MURDER AND OTHER NON-TRAFFIC CRIMINAL HOMICIDES (Chapter 9A.32 RCW)

Evidence that people provided guns to defendant knowing of her ongoing strife with her estranged husband is evidence of agreement and supports a murder-conspiracy charge against her. State v. Stark, 158 Wn. App. 952 (Div. III, Dec. 16, 2010) – February 11:19

No invasion of province of jury occurred with detective's testimony that during interrogation, in order to see if defendant would change his story, he told defendant he was lying; also, evidence is sufficient to support premeditation element of first degree murder. State v. Notaro, 161 Wn. App. 654 (Div. II, May 6, 2011) – September 11:21

Common law "born alive" rule applied: Status of victim is determined at time of death, not at time of commission of crime, so if child that is injured before being born dies after delivery, criminal homicide may be prosecuted. State v. Besabe, 166 Wn. App. 872 (Div. I, Mar. 5, 2012) – September 12:23

Evidence as to nature of and motive for assault held sufficient to support premeditation element of murder conviction. State v. Thompson, 169 Wn. App. 436 (Div. I, July 16, 2012) – January 13:23

Evidence of premeditation held sufficient to support first degree murder conviction in death of spouse; also, under a transferred intent theory, evidence also held to support second degree assault conviction for injury to daughter who had tried to block fatal attack. State v. Aguilar, 176 Wn. App. 264 (Div. III, Aug. 20, 2013) – November 13:24

Prosecutor may consider strength of evidence, along with facts and circumstances of crime, when determining whether to seek the death penalty. State v. McEnroe; State v. Anderson, ___ Wn.2d ___, 309 P.3d 428 (Sept. 5, 2013) – November 13:17

MUTUAL AID PEACE OFFICER POWERS ACT (Chapter 10.93 RCW)

Extraterritorial arrest: Reckless driving does not qualify per se as an "emergency involving an immediate threat to human life or property" under RCW 10.93.070(2). State v. King, 167 Wn.2d 324 (2009) – December 09:21

Washington State University police officer had authority for off-campus arrest under Mutual Aid Agreement. State v. Hardgrove, 154 Wn. App. 182 (Div. III, 2010) – April 10:22

NECESSITY COMMON LAW DEFENSE

Common law medical necessity defense is not abrogated by chapter 69.51A RCW, Washington's Medical Use of Marijuana Act. State v. Kurtz, ___ Wn.2d ___, 309 P.3d 472 (Sept. 19, 2013) – December 13:20

OBSTRUCTING (RCW 9A.76.020) AND RELATED OR SIMILAR OFFENSES

Words alone can constitute obstructing under RCW 9A.76.020(1). State v. Williams, 152 Wn. App. 937 (Div. II, 2009) – January 10:17 Note: The Washington Supreme Court reversed; see entry below this topic.

Words alone cannot constitute obstructing. State v. Williams, 171 Wn.2d 474 (May 12, 2011) – July 11:19

Court of Appeals rejects sufficiency-of-evidence and constitutional challenges to obstructing statute where disturbance-call occupant refused order to come to door and exit with his hands up. State v. Steen, 164 Wn. App. 789 (Div. II, Nov. 9, 2011, amended Dec. 20, 2011), review denied, 173 Wn.2d 1024 (2012) – March 12:17

OPEN COURTS (See also "Public Records Act" topic)

Once a competency evaluation is filed with the court, it is subject to the presumption of openness; redaction, rather than sealing entire evaluation, is not an abuse of discretion. State v. Chen, 178 Wn.2d 350 (Sept. 5, 2013) – November 13:16

OUTRAGEOUS GOVERNMENT MISCONDUCT

No outrageous government misconduct in: 1) alleged deception by detective in talking to victims, witnesses and their family members; or in 2) alleged coaching of witnesses by victims' advocate. State v. Wiatt, 151 Wn. App. 22 (Div. II, 2009) – November 09:16

Compliance check by Liquor Control Board using an underage, undercover agent was not a search; also, bar's entrapment and outrageous government conduct challenges fail. Dodge City Saloon v. Liquor Control Board, 168 Wn. App. 388 (Div. II, May 15, 2012) – September 12:13

PERJURY (RCW 9A.72.020)

Heightened proof requirement of perjury satisfied where evidence of the knowingly false statement is recorded prior to the hearing at which the perjury is subsequently committed. State v. Singh, 167 Wn. App. 971 (Div. III, May 3, 2012) – September 12:16

PLEA BARGAINING

State may make plea bargain conditional on defendant not moving for identification of a confidential informant. State v. Shelmidine, 166 Wn. App. 107 (Div. II, Jan. 24, 2012) – August 12:21

POSSESSING STOLEN PROPERTY (Chapter 9A.56 RCW) (See also "Theft" topic)

Possessing stolen checking account numbers constituted possession of stolen access devices. State v. Chang, 147 Wn. App. 490 (Div. I, 2008) – January 09:03

Defense of good faith claim of title does not apply to possession-of-stolen-property cases. State v. Hawkins, 157 Wn. App. 739 (Div. III, Sept. 9, 2010) – March 11:24

In possessing stolen vehicle case, defendant loses argument that he possessed only stolen car parts, not a stolen car. State v. Acevedo, 159 Wn. App. 221 (Div. III, Dec. 9, 2010) – April 11:25

Knowingly possessing a stolen, unsolicited, unactivated credit card taken without permission from a trash can inside another's home is second degree possession of stolen property under RCW 9A.56.010(1)(c). State v. Rose, 160 Wn. App. 29 (Div. III, Feb. 8, 2011) – May 11:16 Note: The Washington Supreme Court reversed this decision; see entry below this topic.

Possession of stolen property is a continuing offense and statute of limitations runs from the date the defendant last possessed the property; defendant "used" vehicle in commission of felony for purposes of DOL suspension statute. State v. Contreras, 162 Wn. App. 540 (Div. III, July 7, 2011) – January 12:25

Evidence held to be insufficient to support conviction for possession of stolen access device where the defendant possessed a plastic credit card bearing another's name, an account number, and other information that accompanied a credit card offer, but the card had not been activated or signed. State v. Rose, 175 Wn.2d 10 (Aug. 9, 2012) – October 12:07

POST-CONVICTION DNA TESTING RIGHT

Statute authorizing post-conviction testing of DNA evidence at defense request gets a relatively narrow interpretation. State v. Riofta, 166 Wn.2d 358 (2009) – August 09:16

Federal constitution's due process clause does not provide a right to post-conviction DNA testing; statutes provide the only remedies. Dist. Attorney's Office for the Third Judicial Dist. v. Osborne, 557 U.S. 52 (2009) – September 09:03

Defendant meets RCW 10.73.170's test for post-conviction DNA testing. State v. Gray, 151 Wn. App. 762 (Div. I, 2009) – October 09:23

PREEMPTION BY STATE LAW OF LOCAL ORDINANCES

City littering ordinance, which has criminal sanctions, held not preempted by state littering law, which has only civil sanctions. State v. Kirwin, 165 Wn.2d 818 (2009) – May 09:13

PROSECUTOR MISCONDUCT

Prosecutor's improper injection of racial prejudice into trial found not harmless. State v. Monday, 171 Wn.2d 667 (June 9, 2011) – August 11:16

PUBLIC RECORDS ACT (Chapter 42.56 RCW)

Public records request must be sent to agency's designated person. Parmelee v. Clark, 148 Wn. App. 748 (Div. I, 2008) – April 09:23

Oral request can constitute a public records request under chapter 42.56 RCW, but in Beal case a request at a public meeting for information did not constitute a request for public records. Beal v. City of Seattle, 150 Wn. App. 865 (Div. I, 2009) – September 09:20

Public Records Act: Court establishes a 16-part test to guide trial courts in calculating daily penalties. Yousoufian v. Sims, 168 Wn.2d 444 (2010) – May 10:23

Under "privacy prong" of investigative records exemption, RCW 42.56.240(1), employee personal information exemption, RCW 42.56.230(2), and the Criminal Records Privacy Act, chapter 10.97 RCW, officer's name may be redacted from non-adverse internal administrative investigation and from criminal investigation where charges were not filed, but remainder of the investigation records must be disclosed. Bainbridge Island Police Guild v. City of Puyallup, 172 Wn.2d 398 (Aug. 18, 2011) – October 11:09

Prison surveillance video recordings held exempt from public disclosure as "essential to effective law enforcement." Fischer v. Department of Corrections, 160 Wn. App. 722 (Div. I, Jan. 24, 2011) – October 11:24

Court of Appeals upholds constitutionality of RCW 42.56.565 (inspection or copying of public records by persons serving criminal sentences); affirms order permanently enjoining disclosure of records. King County Department of Adult and Juvenile Detention v. Parmelee, 162 Wn. App. 337 (Div. I, June 27, 2011) – November 11:22

Court may appropriately consider the identity of a public records requestor when determining whether to issue injunctive relief under the Public Records Act; RCW 42.56.565 (inspection or copying of public records by persons serving criminal sentences) applies retroactively. Franklin County Sheriff's Office v. Parmelee, 162 Wn. App. 289 (Div. III, June 21, 2011) – November 11:22

There is no "standing" or "continuing" request under the Public Records Act; the investigative records exemption, RCW 42.56.240(1), does not cease to apply once the final witness interview has occurred and does apply to records of internal administrative investigation. Sargent v. Seattle Police Department, 167 Wn. App. 1 (Div. I, Sept. 19, 2011) – December 11:19

Discovery in PRA cases is the same as in other civil cases; Washington Supreme Court adopts federal Freedom of Information Act standards of reasonableness regarding adequacy of search; party may be entitled to costs and fees based on wrongful failure to disclose even if requestor already possesses records prior to lawsuit – overruling Daines v. Spokane County. Neighborhood Alliance v. Spokane, 172 Wn.2d 702 (Sept. 29, 2011) – February 12:12

There is no requirement that public records be produced electronically; however, any response notifying the requestor that redactions will be made, even to say that the records cannot be produced in the format requested, triggers the Public Records Act redaction log requirement. Mitchell v. Department of Corrections, 164 Wn. App. 597 (Div. II, Sept. 7, 2011; amended Dec. 6, 2011) – February 12:16

Agency's failure to respond to public records request within 5 days violates the PRA; inadvertent loss of e-mail prior to request does not violate PRA. West v. Department of Natural Resources, 163 Wn. App. 235 (Div. II, Aug. 23, 2011) – February 12:21

Court of Appeals rejects the argument that there is no statute of limitations under the PRA. Johnson v. Department of Corrections, 164 Wn. App. 769 (Div. II, Nov. 8, 2011) – March 12:20

Daily penalty is not per individual record nor per "grouped" records. Bricker v. L & I, 164 Wn. App. 16 (Div. II, Sept. 20, 2011) – March 12:25

Snohomish County did not violate PRA by requesting clarification of request. Levy v. Snohomish County, 167 Wn. App. 94 (Div. I, Jan. 23, 2012, publication ordered March 19, 2012) – August 12:22

A federal statute, 23 U.S.C. § 409, protecting location-specific collision data does not apply to collision records collected by the Washington State Patrol pursuant to RCW 46.52.060. Gendler v. Batiste, 174 Wn.2d 244 (April 12, 2012) – September 12:06

Federal regulation requiring marine employers to keep drug and alcohol test results confidential is an exempting "other statute" under the PRA. Freedom Foundation v. Washington State Department of Transportation, 168 Wn. App. 278 (Div. II, May 10, 2012) – September 12:15

Attorney fee invoices that exceed county's deductible, and thus county never receives, are not public records under PRA. West v. Thurston County, 168 Wn. App. 162 (Div. II, May 8, 2012) – September 12:15

The Public Records Act does not require records to be divided into separate groups based on production date. Double H, L.P. v. Department of Ecology, 166 Wn. App. 707 (Div. III, Feb. 23, 2012) – September 12:24

Guild representative has standing to bring Public Records Act lawsuit, but letter to sheriff did not provide sufficient notice that it was a PRA request. Germeau v. Mason County, 166 Wn. App. 789 (Div. II, Feb. 28, 2012) – October 12:24

Under Public Records Act, neither a sex offender sentencing alternative evaluation nor a related victim impact statement qualifies under the PRA exemption for investigative records. Koenig v. Thurston County, 175 Wn.2d 837 (Sept. 27, 2012) – January 13:12

Juvenile court's disclosure of special sex offender disposition alternative (SSODA) evaluation to local law enforcement agencies was mandated by statute; court also opines that evaluation would be exempt from public disclosure. State v. Sanchez, 169 Wn. App. 405 (Div. I, July 9, 2012) – January 13:24

City's search for records was reasonably calculated to uncover relevant records; purely private e-mails, from personal computers, were not public records within the meaning of the Public Records Act. Forbes v. City of Gold Bar, 171 Wn. App. 857 (Div. I, Nov. 13, 2012) – February 13:25

Public Record Act's one-year statute of limitations applies even where records are produced in a single installment and no exemptions are claimed; Division Two declines to follow Division One's opinion in Tobin v. Worden. Bartz v. Department of Corrections, 173 Wn. App. 522 (Div. II, Feb. 12, 2013) – May 13:23

Washington Supreme Court, among other things, interprets investigative records exemption of RCW 42.56.240(1) in case that arose out of Washington Attorney General's Office investigation under Consumer Protection Act of company's lending practices. Ameriquest v. Office of the Attorney General, 177 Wn.2d 467 (May 9, 2013) – September 13:14

Five Supreme Court justices sign opinion that provides a detailed framework for analysis of Public Records Act questions, including an outline, a flowchart and a categorized listing of statutes; four justices sign concurring opinion that criticizes the lead opinion for addressing questions not before the Court. Resident Action Council v. Seattle Housing Authority, 177 Wn.2d 717 (May 9, 2013) – September 13:14

Inmate prevails in Public Records Act lawsuit against the Department of Licensing on issues of (1) timeliness of response to request, (2) redacting of non-exempt information, and (3) adequacy and timeliness of explanations for redactions. Gronquist v. Department of Licensing, ___ Wn. App. ___ (Div. II, July 30, 2013) – October 13:24

RAPE AND OTHER SEX OFFENSES (Chapter 9A.44 RCW)

Consenting sexual intercourse between a high school teacher and his 18-year-old student held not criminal; court dismisses charge of first degree sexual misconduct with a minor. State v. Hirschfelder, 148 Wn. App. 328 (Div. II, 2009) – March 09:21 Note: The Washington Supreme Court reversed this decision; see entry below this topic.

"Detained" under custodial sexual assault statute gets broad reading. State v. Torres, 151 Wn. App. 378 (Div. I, 2009) – September 09:19

Corpus delicti rule: Child's testimony that defendant attempted to have intercourse was sufficient corroboration to support admission into evidence of defendant's confession to penetration. State v. Angulo, 148 Wn. App. 642 (Div. III, 2009) – September 09:24

Evidence held to be sufficient to support conviction for attempted second degree rape of a child. State v. White, 150 Wn. App. 337 (Div. II, 2009) – September 09:25

Father of boy and girl who were both under age eight held guilty of incest and child rape for causing them to have sex with each other. State v. Bobenhouse , 166 Wn.2d 881 (2009) – October 09:14

Evidence in child molestation case held sufficient to prove the "purpose of gratifying sexual desire" and "intimate parts" elements of RCW 9A.44.010(2)'s definition of "sexual contact." State v. Harstad, 153 Wn. App. 10 (Div. I, 2009) – October 10:23

Defendant may be convicted of attempted child rape for communications and actions in

relation to a fictional underage person created by an undercover law enforcement officer. State v. Patel, 170 Wn.2d 476 (Nov. 10, 2010) – February 11:05

Evidence in sex sting case held sufficient to support substantial step and intent elements of attempted child rape. State v. Wilson, 158 Wn. App. 305 (Div. I, Nov. 1, 2010) – February 11:22

Consenting sexual intercourse between a high school teacher and his 18-year-old student held criminal; 5-4 majority of Supreme Court reverses Court of Appeals and reinstates charge of First Degree Sexual Misconduct with a minor (note: in 2009, legislature amended RCW 9A.44.093 to eliminate claimed loophole). State v. Hirschfelder, 170 Wn.2d 536 (Nov. 18, 2010) – April 11:09

Corpus delicti of first-degree child molestation established. State v. Grogan, 158 Wn. App. 272 (Div. III, Oct. 28, 2010) – August 11:22

First degree child rape: Sufficient evidence held to support stepfather's convictions on four counts despite some inconsistencies between the victim's testimony and her earlier out-of-court accounts. State v. Corbett, 158 Wn. App. 576 (Div. II, Nov. 16, 2010) – September 11:23

Mere contact between male and female sex organs does not constitute "penetration" under "sexual intercourse" definition. State v. Weaville, 162 Wn. App. 801 (Div. I, July 25, 2011) – January 12:25

Required "sexual intercourse" element of first degree child rape not met where defendant penetrates buttocks but not anus. State v. A.M. 163 Wn. App. 414 (Div. I, Sept. 6, 2011) – February 12:18

Third degree rape defendant loses argument that the jury must consider "lack of consent" from the subjective view of the defendant. State v. Higgins, 168 Wn. App. 845 (Div. III, June 19, 2012; as corrected June 21, 2012) – November 12:24

Child-rape defendant has burden of proving her defense that she was asleep while the child engaged in intercourse with her. State v. Deer, 175 Wn.2d 725 (Oct. 25, 2012) – January 13:11

"Forcible compulsion" element of indecent liberties supported by evidence of threat that was implied by past forcible abuses of child. State v. Gower, 172 Wn. App. 31 (Div. II, Nov. 20, 2012) – January 13:20

Knowledge that the person is incapable of consent by reason of being physically helpless is not an essential element of indecent liberties; evidence is held sufficient to convict defendant of indecent liberties. State v. Mohamed, 175 Wn. App. 45 (Div. I, May 28, 2013) – September 13:19

RENDERING CRIMINAL ASSISTANCE (RCW 9A.76.050-090)

Where victim of shooting knew who shot him and his companion but claimed to police that he did not know, the shooting victim committed "rendering criminal assistance;" also, duress defense was not applicable to the defendant's mere generalized fear of retaliation with no actual threat, express or implied, from another. State v. Budik, 156 Wn.

App. 123 (Div. III, 2001) – October 10:17 Note: The Washington Supreme Court reversed this decision; see entry below this topic.

Where there was evidence that a victim of a shooting knew who shot him and his companion, but he claimed to police that he did not know, the shooting victim did not commit rendering criminal assistance. State v. Budik, 173 Wn.2d 727 (Feb. 16, 2012) – June 12:16

RES JUDICATA AND COLLATERAL ESTOPPEL

Acquittal in criminal prosecution under beyond-a-reasonable-doubt proof standard does not preclude probation revocation based on same conduct but determined under lower proof standard. City of Aberdeen v. Regan, 147 Wn. App. 538 (Div. II, 2008) – April 09:17 Note: The Washington Supreme Court affirmed this decision; see entry below this topic.

Supreme Court agrees with Court of Appeals that acquittal in criminal prosecution under beyond-a-reasonable-doubt standard does not preclude probation revocation that was based on same conduct but was determined under a lower proof standard. City of Aberdeen v. Regan, 170 Wn.2d 103 (2010) – November 10:13

ROBBERY (Chapter 9A.56 RCW)

Evidence of robbery with a realistic toy gun held sufficient for first degree robbery statute. State v. Webb, 162 Wn. App. 195 (Div. III, June 7, 2011) – November 11:23

Robbery evidence sufficient under "transactional" analysis where thief took item from person, handed it to accomplice, and joined others in using force to prevent victim from regaining possession of item. State v. Truong, 168 Wn. App. 529 (Div. I, May 29, 2012) – September 12:23

SEARCHES (See also "Arrest, Stop and Frisk" topic)

Attorney-client privileged documents

Dismissal of charges held to be required based on detective's seizure and scrutiny of attorney-client-protected papers not covered by the search warrant and taken during execution of a search warrant in a child sex abuse investigation. State v. Perrow, 156 Wn. App. 322 (Div. III, 2010) – July 10:24

Automatic standing

Defendant caught with illegal drugs has automatic standing to challenge search of apartment where he was a guest, but his standing does not allow him to challenge search as if he were one of the tenants. State v. Libero, 168 Wn. App. 612 (Div. II, June 5, 2012) – November 12:15

Border searches by federal agents

Despite ICE's lack of reasonable suspicion of criminal conduct by the previously convicted child molester coming back to the United States from Mexico, border search doctrine held to justify taking laptop computer 170 miles to lab and searching it over a two-day period for child porn. United States v. Cotterman, 637 F.3d 1068 (9th Cir. March 30, 2011) – October

11:04 Note: An 11-judge panel affirmed the result of this decision but under different analysis. See the entry below this subtopic.

Border search: 8-3 majority creates electronics-device exception to Fourth Amendment border search exception by requiring reasonable suspicion to support forensic search of computer; Ninth Circuit identifies reasonable suspicion in light of the suspect's molesting record, his pattern of travel, the password protection on his computer, and other facts. United States v. Cotterman, 709 F.3d 952 (9th Cir., March 8, 2013) – May 13:11

Community caretaking exception to warrant requirement (See also "Emergency circumstances" and "Exigent circumstances" subtopics under this "Searches" topic)

Warrantless emergency home search to look for child sex victim ok, as was protective sweep, but follow-up warrantless entry and pre-warrant walk-through not ok; also, detective's post-Miranda-invocation statements to suspect: 1) telling suspect that officer would be seeking a search warrant, and 2) stating age of victim were not "interrogation," so incriminating response was volunteered. State v. Sadler, 147 Wn. App. 97 (Div. I, 2008) – January 09:18

Where uncle was outside hotel room he was sharing with his nephew when uncle complained to police about nephew, community caretaking exception to constitutional warrant requirement did not support forcible police entry; also, uncle's consent did not support entry of room without nephew's consent. State v. Williams, 148 Wn. App. 678 (Div. II, 2009) – April 09:05

Vehicle stop held not pretextual; open view of methamphetamine manufacturing materials provides exigent circumstances supporting vehicle entry to secure the materials. State v. Gibson, 152 Wn. App. 945 (Div. II, 2009) – January 10:11

Officers held justified in forcing entry of residence under the Fourth Amendment's purely objective test for the emergency aid exception to the warrant requirement; beware, however: The tests for the emergency aid and community caretaking exceptions to the warrant requirement under the Washington constitution include a subjective and/or no-pretext component. Michigan v. Fisher, ___U.S. ___, 130 S. Ct. 546 (2009) – March 10:02

Community caretaking function justified officer's warrantless entry of residence to see if non-responsive, apparently unconscious, person observed in open view on couch was in need of medical help. State v. Hos, 154 Wn. App. 238 (Div. II, 2010) – March 10:16

Officers' warrantless entry into home to investigate possible school-threat not justified by exigent circumstances; two officers are entitled to qualified immunity based on their reasonable belief that they had consent to enter, and two officers are not. Huff v. City of Burbank, 632 F.3d 539 (9th Cir, Jan. 11, 2011) – March 11:02 Note: The United States Supreme Court reversed this decision; see entry below this subtopic.

No exigent circumstances justified entering curtilage of home: Officers should not have entered without a warrant based solely on neighbor's report that homeowners were at work and an individual had thrown a backpack over the fence and climbed into the backyard. United States v. Struckman, 603 F.3d 741 (9th Cir. May 4, 2010) – March 11:15

Community caretaking exception to the warrant requirement does not justify non-consenting warrantless entry under the facts of this suspicion-of-domestic-violence

case. State v. Schultz, 170 Wn.2d 746 (Jan. 13, 2011) – March 11:16

Civil Rights Act lawsuit: Officers' forcible entry of home of driver who minutes earlier had been involved in minor car collision held not justified by possibility that other driver's belief she had smelled alcohol was actually evidence of first driver being near diabetic coma. Hopkins v. Bonvicino, 573 F.3d 752 (9th Cir., July 16, 2009) – May 11:06

Fourth Amendment argument that officers created exigency in knocking and announcing their presence at drug suspect's door is rejected in categorical ruling that apparently precludes such a theory if officers did not otherwise act unlawfully; Washington Constitution might be interpreted more restrictively against law enforcement. Kentucky v. King, ___U.S. ___, 131 S. Ct. 1849 (May 16, 2011) – August 11:08

United States Supreme Court grants qualified immunity to officers who forcibly entered residence in school-bomb-threat-rumor case where home occupant ran inside when officer asked whether there were guns in the residence. Ryburn v. Huff, ___U.S. ___, 132 S. Ct. 987 (Jan. 23, 2012) (United States Supreme Court unanimously reverses Huff v. City of Burbank, 632 F.3d 539 (9th Cir., Jan. 11, 2011) March 11:02) – April 12:03

Seizure, not mere social contact, occurred where officer's accusation of criminal activity was followed by his request that teens voluntarily empty their pockets; also, community caretaking argument based on truancy law rejected because evidence fails to support it. State v. Guevara, 172 Wn. App.184 (Div. III, Dec. 6, 2012) – February 13:09

Divided court upholds admissibility of evidence against State constitutional challenge under article I, section 7, but justices fail to reach a majority on whether that is (a) because the officers' search was lawful, or (b) instead, because an exception to the Washington exclusionary rule applies; four Justices argue for an unusual community caretaking rule. State v. Smith, 177 Wn.2d 533 (June 6, 2013) – August 13:19

Confidential informant protection

State may make plea bargain conditional on defendant not moving for identification of a confidential informant. State v. Shelmidine, 166 Wn. App. 107 (Div. II, Jan. 24, 2012) – August 12:19

Consent search exception to search warrant requirement

Washington Department of Fish and Wildlife officer's consent request while in suspect's driveway asking to see cow elk carcasses did not need Ferrier warnings. State v. Overholt, 147 Wn. App. 92 (Div. III, 2008) – January 09:15

2-1 majority holds Ferrier warnings were required to obtain consent to search house for person that officer believed had been involved in a 3 a.m. one-car rollover accident. State v. Freepons, 147 Wn. App. 689 (Div. III, 2008) – February 09:14

Where uncle was outside hotel room he was sharing with his nephew when uncle complained to police about nephew, community caretaking exception to constitutional warrant requirement did not support forcible police entry; also, uncle's consent did not support entry of room without nephew's consent. State v. Williams, 148 Wn. App. 678 (Div. II, 2009) – April 09:05

Consent by residential co-occupant # 1 after her release from handcuffs held voluntary; absence of arrested residential co-occupant # 2 at time of police request to co-occupant # 1 for consent held not pretextual circumstance because officers did not purposely orchestrate the absence of co-occupant # 2 to prevent his objection. United States v. Brown, 563 F.3d 410 (9th Cir., April 17, 2009) – August 09:06

Consent by conditional use permit holder to future administrative searches by county staff held voluntary. Bonneville v. Pierce County, 148 Wn. App. 500 (Div. II, 2009) – September 09:23

Fire department administrators and contract attorney violated firefighter's Fourth Amendment rights when, during an internal affairs investigation, they ordered him to retrieve some objects from his home on pain of being disciplined for insubordination. Delia v. City of Rialto, 621 F.3d 1069 (9th Cir., Sept. 9, 2010) – November 10:03

Mere acquiescence to police entry does not constitute consent. State v. Schultz, 170 Wn.2d 746 (2010) – March 11 LED:16

Defendant's Terry, Miranda, consent, and curtilage arguments rejected in case involving officers' investigation of previous evening's gunfire at campsite on national forest service land. United States v. Basher, 629 F.3d 1161 (9th Cir., Jan. 20, 2011) – April 11:02

Girlfriend had authority to consent to search for child porn on computer that imprisoned boyfriend owned, but that he had allowed her to use without restriction and without password protection. United States v. Stanley, 653 F.3d 946 (9th Cir., Aug. 2, 2011) – February 12:08

Court of Appeals imports search-incident-to-arrest scope limits into consent search case, and holds that general consent to search car and its trunk did not include consent to search locked container in the trunk. State v. Monaghan, 166 Wn. App. 782 (Div. I, Jan. 3, 2012) – March 12:09

Where officers were searching for a domestic violence suspect reasonably suspected of being present in a third party's residence, the reasonable suspicion means that Ferrier warnings were not required to obtain her consent to search residence for suspect. State v. Dancer, 174 Wn. App. 666 (Div. II, April 30, 2013) – July 13:19 Status: The Washington Supreme Court stayed consideration of defendant's request for review while the Supreme Court considered the Ferrier issue in State v. Ruem. On November 27, 2013, the Supreme Court ruled in Ruem, rejecting the defendant's argument that Ferrier warnings are mandated in this factual context, but ultimately ruling against the State on the consent and other issues in the case. The Washington Supreme Court decision in State v. Ruem will be reported in the January 2014 LED. As of the date of publication of this five-year index, the Washington Supreme Court had not finally acted on the pending petition for review in Dancer.

Where State did not prove at hearing that officers had reasonable suspicion that the subject of an arrest warrant was present in a third party's residence when the officers asked the resident for consent to search her home for the warrant subject, the consent cannot be established to be voluntary because the officers did not give Ferrier warnings. State v. Westvang, 174 Wn. App. 913 (Div. II, May 21, 2013) – July 13:23 Status: The Washington Supreme Court stayed consideration of the State's request for review while the Supreme Court considered the Ferrier issue in State v. Ruem. On November 27, 2013, the Supreme Court ruled in Ruem, rejecting the defendant's argument that Ferrier warnings are

mandated in this factual context, but ultimately ruling against the State on the consent and other issues in the case. The Washington Supreme Court decision in State v. Ruem will be reported in the January 2014 LED. As of the date of publication of this five-year index, the Washington Supreme Court had not finally acted on the pending petition for review in Westvang.

Border patrol agent's answering of suspect's cell phone and passing himself off as suspect exceeded scope of suspect's consent to search cell phone; consent to search phone is not consent to answer calls. United States v. Lopez-Cruz, 730 F.3d 803 (9th Cir., Sept. 12, 2013) – December 13:02

Deliberate or reckless omissions or false statements in search warrant affidavit

Split 3-judge panel holds that case must go to trial on the question of whether detectives got search and arrest warrants for child pornography using affidavit that deliberately or recklessly contained material omissions and false statements. Chism v. Washington State, 655 F.3d 1106 (9th Cir., Aug. 25, 2011, amended Nov. 7, 2011) – January 12:16 Status: On April 16, 2012, the United States Supreme Court denied the State's request for review.

Emergency circumstances exception to search warrant requirement (See also "Community Caretaking" and "Exigent circumstances" subtopics under this "Searches" topic)

Warrantless emergency home search to look for child sex victim ok, as was protective sweep, but follow-up warrantless entry and pre-warrant walk-through not ok; also, detective's post-Miranda-invocation statements to suspect (1) telling suspect that officer would be seeking a search warrant and (2) stating age of victim were not "interrogation," so incriminating response was volunteered. State v. Sadler, 147 Wn. App. 97 (Div. I, 2008) – January 09:18

Exigent circumstances: Officers at residence investigating theft of tanker truck carrying anhydrous ammonia were justified in warrantless residence search for disappearing gun and for possible third methamphetamine manufacturing suspect. State v. Smith, 165 Wn.2d 511 (2009) – March 09:10

Probable cause as to DUI, plus the scientific fact that alcohol dissipates in the body over time, held not to add up to exigent circumstances supporting reaching through doorway to arrest man suspected of being intoxicated and of having driven drunk about one hour earlier. State v. Hinshaw, 149 Wn. App. 747 (Div. III, 2009) – July 09:20

Warrantless entry into curtilage (high-fence-and-gate-enclosed front yard) in gang neighborhood in hot pursuit of suspect where probable cause to arrest was for only disobeying order to stop was not justified under either exigent circumstances or emergency exceptions to the warrant requirement. Sims v. Stanton, 706 F.3d 954 (9th Cir., Dec. 3, 2012, amended Jan. 16, 2013) – February 13:03; March 13:04. Note: The January 2014 LED will contain an entry reporting the United States Supreme Court's reversal of the Ninth Circuit decision in Stanton on the issue of qualified immunity.

Divided court upholds admissibility of evidence against State constitutional challenge under article I, section 7, but justices fail to reach a majority on whether that is (a) because the officers' search was lawful, or (b) instead, because an exception to the Washington exclusionary rule applies. State v. Smith, 177 Wn.2d 533 (June 6, 2013) – August 13:19

Entry of private premises to arrest (Payton/Steagald rules)

Payton rule requiring warrant before officers make forcible arrest from residence held not applicable to 12-hour standoff because for standoffs exigency is deemed to exist from start to finish. Fisher v. City of San Jose, 558 F.3d 1069 (9th Cir., March 9, 2009) – April 09:04

Exclusionary rules of federal and State constitutions

2-1 majority rules that subjective intent of officers at the time that they unlawfully searched car's trunk precludes application of "independent source" exception to the exclusionary rule. State v. Perez, 147 Wn. App. 141 (Div. II, 2008) – January 09:24

Where police are merely negligent in failing to update police computer re arrest warrant, exclusionary rule of Fourth Amendment does not require suppression of evidence seized in search incident to arrest (Washington law likely differs, however). Herring v. United States, 555 U.S. 135 (2009) – March 09:03

Fourth Amendment "good faith" exception to exclusionary rule held not applicable to a search incident to arrest in violation of the rule announced in Arizona v. Gant. United States v. Gonzalez, 578 F.3d 1130 (9th Cir., Aug. 24, 2009) – November 09:10 Note: The United States Supreme Court overruled the Gonzalez decision in Davis v. United States, ___U.S. ___, 131 S. Ct. 2419 (June 16, 2011) September 11 LED:04 (see entry below this subtopic).

Supreme Court holds that to justify a warrantless search of a residence in following up a probation violation, a probation officer must have probable cause that the violator resides there; court also rejects the State's argument that the Washington constitution contains an inevitable discovery exception to its exclusionary rule. State v. Winterstein, 167 Wn.2d 620 (2009) – February 10:24

Defendant permitted to raise Gant argument on appeal despite having failed to move for suppression at the time of trial; state's "good faith" exception-to-exclusion argument rejected by Division Two of the Washington Court of Appeals. State v. Harris, 154 Wn. App. 87 (Div. II, 2010) – March 10:25

State's "good faith" exception-to-exclusion argument is accepted by Division One of the Washington Court of Appeals in 2-1 decision; Division One disagrees with Division Two and with the Ninth Circuit of the United States Court of Appeals. State v. Riley, 154 Wn. App. 433 (Div. I, 2010) – March 10:25 (note that Riley was also digested in the June 2010 LED at 24). Note: The Washington Supreme Court subsequently rejected, in State v. Afana and State v. Adams, application of a "good faith" exception in this context; see entry below this subtopic.

Vehicle search incident to arrest held unlawful – court is not clear as to whether it equates United States and Washington Supreme Court holdings in Gant, Patton and Valdez; "good faith" exception to exclusionary rule rejected in analysis under Washington constitution, article I, section 7. State v. Afana, 169 Wn.2d 169 (2010) – August 10:09

Washington Supreme Court confirms that exclusionary rule of Washington constitution's article I, section 7 does not contain a case-law-based good faith exception. State v. Adams, 169 Wn.2d 487 (2010) – October 10:15

Fourth Amendment exclusionary rule does not apply to vehicle search incident to arrest conducted in objectively reasonable reliance on pre-Gant case law; different result under article 1, section 7 of Washington Constitution and State v. Afana. Davis v. United States, ___U.S. ___, 131 S. Ct. 2419 (June 16, 2011) – September 11:04

Split court does not resolve whether the concept of "attenuation" is part of the exclusionary rule of Washington's Constitution. State v. Eserjose, 171 Wn.2d 907 (June 30, 2011) – September 11:06

Washington Supreme Court majority opinion reverses Court of Appeals decision and conviction, but, for procedural reasons, declines to address merits of parties' arguments about exclusionary rule "attenuation" doctrine. State v. Ibarra-Cisneros, 172 Wn.2d 880 (Oct. 20, 2011) – January 12:23

Independent Source exception to exclusionary rule allows testimony and evidence of unusual ammunition purchased by defendant. State v. Hilton, 164 Wn. App. 81 (Div. III, Sept. 27, 2011) – March 12:24

Split court holds that independent source and attenuation exceptions to the exclusionary rule apply to allow testimony of assault victims that officers inadvertently discovered after random, warrantless search of motel registry for arrest warrant subjects. State v. Smith, 165 Wn. App. 296 (Div. II, Dec. 6, 2011) – July 12:18 Note: The Washington Supreme Court affirmed the result of the Court of Appeals decision, though under different analysis; see entry below this subtopic.

Divided court upholds admissibility of evidence against State constitutional challenge under article I, section 7, but justices fail to reach a majority on whether that is (a) because the officers' search was lawful, or (b) instead, because an exception to the Washington exclusionary rule applies. State v. Smith, 177 Wn.2d 533 (June 6, 2013) – August 13:19

Execution of search warrant, including frisking or searching persons present

Officer held to have unlawfully searched visitor's purse during execution of search warrant – she was not named in the warrant, the purse was with what were clearly her other personal effects, and she immediately claimed the purse. State v. Lohr, 164 Wn. App. 414 (Div. II, Oct. 18, 2011) – March 12:13

Media presence at execution of search warrant violates Fourth Amendment; however, evidence need not be suppressed where media did not expand the scope of or otherwise affect the search; admission of deceased officer's statements at trial violates hearsay rule. United States v. Duenas, 691 F.3d 1070 (9th Cir., Aug. 16, 2012) – December 12:03

Fourth Amendment authority under Michigan v. Summers to secure occupants found in immediate vicinity of the premises when execution of search warrant begins does not authorize seizing them if they have left immediate vicinity before execution of warrant begins. Bailey v. United States, ___U.S. ___, 133 S. Ct. 1031 (Feb. 19, 2013) – May 13:03

Exigent circumstances exception to search warrant requirement (See also "Community Caretaking" and "Emergency circumstances" subtopics under this "Searches" topic)

Odor of marijuana from car gave officer at traffic stop probable cause that would have supported search warrant and warrantless arrest of lone occupant, but mobility of car plus late night hour and rural location did not add up to exigency for warrantless search. State v. Tibbles, 169 Wn.2d 364 (2010) – September 10:09

Warrantless entry into curtilage (high-fence-and-gate-enclosed front yard) in gang neighborhood in hot pursuit of suspect where probable cause to arrest was for only disobeying order to stop was not justified under either exigent circumstances or emergency exceptions to the warrant requirement. Sims v. Stanton, 706 F.3d 954 (9th Cir., Dec. 3, 2012, amended Jan. 16, 2013) – February 13:03; March 13:04. Note: The January 2014 LED will contain an entry reporting the United States Supreme Court's reversal of the Ninth Circuit decision in Stanton on the issue of qualified immunity.

Scientific fact of natural dissipation of alcohol in bloodstream is not per se exigency that justifies non-consenting blood test in criminal cases where driving under the influence is an element of the crime. Missouri v. McNeely, ___U.S. ___, 133 S. Ct. 1552 (April 17, 2013) – June 13:03

Impound/inventory exception to search warrant requirement

Washington State Patrol may be liable for damages based on former policy of mandatory impound of vehicles of suspended drivers. Potter v. Washington State Patrol, 165 Wn.2d 67 (2008) – January 09:03

Inventory of contents of impounded vehicle was permissible and not a pretext for an evidentiary search; consent is not required prior to an inventory search. State v. Tyler, 166 Wn. App. 202 (Div. II, Jan. 26, 2012) – June 12:26 Note: The Washington Supreme Court affirmed the Court of Appeals decision; see entry below this subtopic.

Vehicle impound-inventory held to violate Fourth Amendment on grounds that (1) community caretaking rationale for impound not met, and (2) inventory was pretextual; also, Ninth Circuit indicates that an arrest cannot support impound-inventory if impound-inventory precedes the arrest. United States v. Cervantes, 678 F.3d 798 (9th Cir., May 16, 2012) – August 12:06 Note: The 3-judge panel granted reconsideration and issued revised majority and dissenting opinions though not changing the result; see entry below this subtopic.

Ninth Circuit issues an amended opinion in United States v. Cervantes deleting its ruling and analysis on pretext but continuing to rule against the vehicle impound based on (1) failure of the impound of the safely parked vehicle to satisfy community caretaking rationale, and (2) occurrence of the impound-inventory prior to the arrest of the vehicle operator. United States v. Cervantes, 703 F.3d 1135 (9th Cir., Nov. 28, 2012) – February 13:07

Impound-inventory holdings: (1) impoundment of vehicle was justified by combination of hazard, driving while license suspended arrest, and exhaustion of reasonable alternatives; (2) inventory was not pretextual; and (3) consent is not generally a requirement for inventory under Washington constitution's article I, section 7. State v. Tyler, 177 Wn.2d 690 (May 30, 2013) – August 13:08

Incident to arrest (MV) exception to search warrant requirement

Car search held not lawfully incident to arrest because record from suppression hearing failed to show how close defendant was to car at time of arrest. State v. Webb, 147 Wn. App. 264 (Div. I, 2008) – January 09:23

"Bright line" rule of Fourth Amendment for search incident to arrest recent MV occupant disappears – if officers have secured the arrestee, then, unless officers have "reason to believe" evidence of the particular offense for which arrest is made is in the vehicle's passenger compartment, they may not search that area incident to arrest. Arizona v. Gant, 556 U.S. 332 (2009) – June 09:13

Police entry into "immediately adjoining area" held lawful as incidental to arrest per Buie, and plain view seizure of gun upheld. United States v. Lemus, 582 F.3d 958 (9th Cir., Sept. 22, 2009) – November 09:05

Retroactivity of Arizona v. Gant and waiver addressed in conflicting Division Two Court of Appeals decisions. State v. McCormick, 152 Wn. App. 536 (Div. II, 2009); State v. Millan, 151 Wn. App. 492 (Div. II, 2009) – November 09:21

Article I, section 7 of the Washington constitution held to contain the search-incident rule of Arizona v. Gant. State v. Patton, 167 Wn.2d 379 (2009) – December 09:17

Under Arizona v. Gant, custodial arrest of driver for use of drug paraphernalia justifies search of vehicle for illegal drugs. State v. Snapp, 153 Wn. App. 485 (Div. II, 2009) – January 10:06 Note: The Washington Supreme Court granted discretionary review and reversed; see entry below this subtopic.

Description of MV owner in MV registration records check, plus observation, provides reasonable suspicion to stop MV for arrest warrants; but case must be remanded for fact hearing on search incident and maybe other issues. State v. Bliss, 153 Wn. App. 197 (Div. II, 2009) – January 10:22

"Independent grounds" ruling in Valdez goes beyond Arizona v. Gant; Washington law enforcement officers are generally precluded by the Washington constitution from searching vehicles "incident to arrest" once the occupant-arrestee has been secured; and while Valdez involves a vehicle search, the reasoning in the court's lead opinion might be extended to restrict searches of persons incident to arrest. State v. Valdez, 167 Wn.2d 761 (2009) – February 10:11

Search of car violated Gant, but evidence held admissible under Fourth Amendment's "inevitable discovery" exception to exclusionary rule (an exception to exclusion that apparently does not apply under Washington constitution). United States v. Ruckes, 586 F.3d 713 (9th Cir., Nov. 9, 2009) – March 10:09

Defendant permitted to raise Gant argument on appeal despite having failed to move for suppression at the time of trial; state's "good faith" exception-to-exclusion argument rejected by Division Two of the Washington Court of Appeals. State v. Harris, 154 Wn. App. 87 (Div. II, 2010) – March 10:25

Division One Court of Appeals panel interprets post-Valdez Washington vehicle search incident rule to permit a search for marijuana based on odor from passenger area; also, stop for no headlights under RCW 46.37.020 held justified by reasonable suspicion and

held not pretextual. State v. Wright, 155 Wn. App. 537 (Div. I, 2010) – June 10:12. Note: The Washington Supreme Court granted discretionary review and reversed; see entry below this subtopic.

Vehicle search incident to arrest held unlawful – Court is not clear as to whether it equates United States and Washington Supreme Court holdings in Gant, Patton and Valdez; "good faith" exception to exclusionary rule rejected in analysis under Washington constitution, article I, section 7. State v. Afana, 169 Wn.2d 169 (2010) – August 10:09

Seizure and arrest of person upheld because (1) initial stop was supported by reasonable suspicion of car prowling, (2) arrest was supported by probable cause of same, and arrest was for gross misdemeanor crime against property, thus meeting misdemeanor presence exception of RCW 10.31.100(1). But search of car held to violate search incident rule of article I, section 7 of Washington constitution even though the search would have been lawful under the Fourth Amendment search incident rule of Arizona v. Gant. State v. Chesley, 158 Wn. App. 36 (Div. II, 2010) – November 10:14

2-1 majority concludes in the alternative that search-incident exception and "open view" justified entry of car to seize gun case following arrest of driver for felony harassment; dissenter argues that neither search-incident exception nor "open view" support vehicle entry or search in absence of true exigent circumstances. State v. Barnes, 158 Wn. App. 602 (Div. II, Nov. 16, 2010) – January 11:03

2-1 majority concludes in the alternative that search-incident exception and "open view" justified entry of car to seize drug paraphernalia after arrest of apparently intoxicated driver; dissenter argues that neither search-incident exception nor "open view" supports vehicle entry or search in absence of actual exigent circumstances; Court appears to be in agreement that arrest was supported by probable cause. State v. Louthan, 158 Wn. App. 732 (Div. II, Nov. 30, 2010) – January 11:08. Note: The Washington Supreme Court granted review and reversed the Court of Appeals decision based on the Washington Supreme Court's 2012 decision in State v. Snapp; see entry below this subtopic.

Open view, search incident, and waiver issues decided against state in 2-1 decision suppressing evidence seized in car search. State v. Swetz, 160 Wn. App. 122 (Div. II, February 11, 2011) – April 11:11

Issues of 1) waiver/failure-to-preserve constitutional arguments, 2) frisk, 3) vehicle search incident to arrest, and 4) impound-inventory-theory touched on and resolved against the state in a 2-1 decision. State v. Abuan, 161 Wn. App. 135 (Div. II, April 12, 2011) – September 11:11

Washington constitution's search incident rule does not authorize search of vehicle after arrestee-occupant has been secured, despite probable cause as to evidence of crime of arrest being in the vehicle. State v. Snapp, 174 Wn.2d 177 (April 5, 2012) and State v. Wright, 174 Wn.2d 177 (April 5, 2012) – May 12:25

Court accepts State's concession that, under facts that arose in 2007, State v. Snapp controls against the State on vehicle search-incident-to-arrest issue. State v. Louthan, 175 Wn.2d 751 (Oct. 25, 2012) – January 13:12

Incident to arrest (persons and personal effects) exception to search warrant requirement

Search of person incident to arrest held lawful under objective standard for "custodial arrest"; court rejects defendant's argument that jail would not have taken him on DWLS arrest. State v. Gering, 146 Wn. App. 935 (Div. III, 2008) – January 10:09

Search of person incident to arrest held lawful and not limited under the rationale of recent case law limiting searches of vehicles. State v. Johnson, 155 Wn. App. 270 (Div. III, 2010) – June 10:18

Recently increased restrictions on vehicle searches again held not applicable to searches of persons incident to arrest. State v. Whitney, 156 Wn. App. 405 (Div. III, 2010) – August 10:16

Search of container found on defendant's person at time of arrest but not searched until after he was secured held unlawful; Ninth Circuit decision conflicts with Washington case law. United States v. Maddox, 614 F.3d 1046 (9th Cir., Aug. 12, 2010) – February 11:03

Court of Appeals applies Arizona v. Gant rule to search of purse (on person) incident to arrest. State v. Byrd, 162 Wn. App. 612 (Div. III, July 19, 2011) – October 11:21 Note: The Washington Supreme Court reversed the Court of Appeals decision in Byrd; see entry below this subtopic.

Court holds that (1) Arrest preceded search of person that yielded rape suspect's identification cards, so search incident to arrest was lawful, and (2) warrantless seizure at police station of suspect's clothing as evidence of crime and later lab testing were lawful as incidental to arrest were seized as evidence of crime. State v. Salinas, 169 Wn. App. 210 (Div. I, July 2, 2012) – October 12:17. Status: Petition for review denied by Washington Supreme Court.

Under the totality of the circumstances, officer acted lawfully under federal and state constitutional doctrines for search incident to arrest when he searched a laptop bag that was taken from the arrestee, who at the time of the search was in handcuffs standing about a car's length away from the bag. State v. MacDicken, 171 Wn. App. 169 (Div. I, Oct. 8, 2012) – February 13:16 Status: The Washington Supreme Court is reviewing the case.

Search incident to arrest: Officer-safety concerns justify the search of defendant's backpack, which was between his feet at point of seizure and was accessible to the cuffed arrestee at point of search; Arizona v. Gant does not dictate a different result; Division Two distinguishes Byrd on facts of this case. State v. Ellison, 172 Wn. App. 710 (Div. II, Jan. 8, 2013) – March 13:17 Status**:** Petition for review by defendant is pending in the Washington Supreme Court; the Supreme Court has stayed action on the petition pending its resolution of the MacDicken case (see entry re MacDicken immediately above in this subtopic.

Vehicle stop justified by reasonable suspicion both (1) that registered owner was committing continuing offense of failure to transfer title, and (2) that passenger was subject of arrest warrant. Also, searching pockets of handcuffed arrestee moments after his lawful custodial arrest held per se justified by fact of the custodial arrest alone. State v. Bonds, 174 Wn. App. 553 (Div. II, April 23, 2013) – July 13:15 Status: Petition for review denied by Washington Supreme Court.

Timely warrantless search of purse incident to arrest upheld simply because purse was in actual possession of arrestee at time of arrest, but court warns that Washington constitution does not authorize search incident based merely on constructive

possession of an item. State v. Byrd, ___Wn.2d ___, 310 P.3d 793 (Oct. 10, 2013) – December 13:12

Issuance, service, and return of warrant (including mere ministerial errors)

Court rejects defense argument based on typographical and procedural errors in search under a warrant, concluding that ministerial errors did not require exclusion of evidence; also holds that although portion of warrant addressing "firearms, shell cases or knives" was overbroad and lacked probable cause, that portion could be severed. State v. Temple, 170 Wn. App. 156 (Div. I, Aug. 20, 2012) – December 12:16

Jail intake/booking inventory

RCW 10.31.030's requirement that arrestee be allowed to post bail before any booking inventory does not apply where items were seized as evidence of crime. State v. Salinas, 169 Wn. App. 210 (Div. I, July 2, 2012) – October 12:17 Status: Petition for Review denied by Washington Supreme Court.

Medical Use of Marijuana Act does not trump search warrant

User's "authorization form" re "Medical Use of Marijuana Act" does not stop search under a warrant (this time, at least). State v. Fry, 168 Wn.2d 1 (2009) – March 10:11

Open view (See also subtopic "Privacy expectations, scope of constitutional protections" under this "Searches" topic)

Vehicle stop held not pretextual; open view of methamphetamine manufacturing materials provides exigent circumstances supporting vehicle entry to secure the materials. State v. Gibson, 152 Wn. App. 945 (Div. II, 2009) – January 10:11

Community caretaking function justified officer's warrantless entry of residence to see if non-responsive, apparently unconscious, person observed in open view on couch was in need of medical help. State v. Hos, 154 Wn. App. 238 (Div. II, 2010) – March 10:16

2-1 majority concludes in the alternative that search-incident exception and "open view" justified entry of car to seize gun case following arrest of driver for felony harassment; dissenter argues that neither search-incident exception nor "open view" support vehicle entry or search in absence of true exigent circumstances. State v. Barnes, 158 Wn. App. 602 (Div. II, Nov. 16, 2010) – January 11:03

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Open view, search incident, and waiver issues decided against state in 2-1 decision suppressing evidence seized in car search. State v. Swetz, 160 Wn. App. 122 (Div. II, Feb. 11, 2011) – April 11:11

Officer lawfully observed evidence in side panel of car door under "open view" doctrine, however, seizure of that evidence without a warrant was unlawful. State v. Jones, 163 Wn. App. 354 (Div. II, Aug. 30, 2011) – February 12:19

Overbreadth and particularity issues for search warrants

Search under warrant upheld: warrant's description of shed was adequate, and the informant-based probable cause test was met. State v. Danielson, 148 Wn. App. 666 (Div. II, 2009) – April 09:12

Distinction between Fourth Amendment concepts of search warrant "particularity" and "overbreadth" explained; Court also addresses whether search warrant should specify what crimes are suspected. United States v. SDI Future Health, 568 F.3d 684 (9th Cir. 2009) (amended decision filed June 1, 2009) – August 09:12

Clause in search warrant held not overbroad in authorizing seizure of indicia of identity of persons in control of premises. Ewing v. City of Stockton, 588 F.3d 1218 (9th Cir., Dec. 9, 2009) – August 10:08

Court of Appeals holds that although portion of warrant addressing "firearms, shell cases or knives" was overbroad and lacked probable cause, that portion could be severed. State v. Temple, 170 Wn. App. 156 (Div. I, Aug. 20, 2012) – December 12:16

Plain view exception to search warrant requirement

Intercepted non-private phone call from jail in which felon talked in semi-code about gun at residence did not waive his Fourth Amendment privacy interest against a search at the residence; court distinguishes past decisions holding that telling police the contents of a nearby container is like placing the contents in a transparent container. United States v. Monghur, 576 F.3d 1008 (9th Cir., Aug. 11, 2009) – October 09:02

In case related to federal investigation of drug company and professional baseball steroids scandal, eleven-judge panel sets extensive guidelines for drafting and executing computer search warrants in order to limit "plain view" seizures of computer evidence. United States v. Comprehensive Drug Testing, Inc. (and two other cases consolidated for appeal), 579 F.3d 989 (9th Cir., Aug. 26, 2009) – October 09:06 Note: The 11-judge panel entered a revised majority opinion in this case; see entry below this subtopic.

There is no longer a Ninth Circuit precedential opinion containing the extensive detailed standards that were set forth in an earlier majority decision regarding drafting and executing computer search warrants in order to limit "plain view" seizures of computer evidence. United States v. Comprehensive Drug Testing, Inc., 621 F.3d 1162 (9th Cir., Sept. 13, 2010) – February 11:04

Privacy expectations, scope of constitutional protections (see also "Open view" subtopic under this "Searches" topic)

Fourth Amendment does not permit officers to forcibly take a cheek swab from a pre-trial indecent exposure detainee for DNA testing to help solve "cold cases" where the officers do not have a search warrant, court order, express statutory authority or even

reasonable suspicion of any specific crime under investigation. Friedman v. Boucher, 568 F.3d 1119 (9th Cir., June 23, 2009) – September 09:03

Intercepted non-private phone call from jail in which felon talked in semi-code about gun at residence did not waive his Fourth Amendment privacy interest against a search at the residence; court distinguishes past decisions holding that telling police the contents of a nearby container is like placing the contents in a transparent container. United States v. Monghur, 576 F.3d 1008 (9th Cir., Aug. 11, 2009) – October 09:02

Police entry of and search in common area of secured multi-unit commercial storage facility held not constitutionally restricted. State v. Lakotiy, 151 Wn. App. 699 (Div. I, 2009) – October 09:21

Witnesses who were previously acquainted with defendant lawfully testified that he was the shooter in cab surveillance photos; also, defendant's privacy rights did not preclude state from presenting evidence that defendant had refused to provide a voice exemplar. State v. Collins, 216 Wn. App. 463 (Div. I, 2009) – November 09:11

Tracking dog's sniff through open window of car located in driveway was not a "search" subject to state constitutional restriction. State v. Hartzell & Tieskotter, 153 Wn. App. 137 (Div. I, 2009) – January 10:19 Note: On July 19, 2010, the Court of Appeals issued a revised opinion correcting its analysis on a sentencing issue (not addressed in the LED) with no change in the search analysis; the revised opinion was not addressed in the LED.

User's "authorization form" re "Medical Use of Marijuana Act" does not stop search under a warrant (this time, at least). State v. Fry, 168 Wn.2d 1 (2009) – March 10:11

Child pornography case: No Fourth Amendment privacy protection for computer file-sharing system accessible to others on peer-to-peer network. United States v. Borowy, 595 F.3d 1045 (9th Cir. 2010) (decision filed February 17, 2010) – April 10:11

Police employer's warrantless review of officer's pager transcript held reasonable as a non-investigatory, work-related search; Supreme Court avoids technology-privacy-search questions. City of Ontario, Calif. v. Quon, ___U.S. ___, 130 S. Ct. 2619 (2010) (decision filed June 17, 2010) – August 10:02

No privilege for child molester's admissions to his therapist, and no problem with use of search warrant to obtain therapist's records. State v. Hyder, 159 Wn. App. 234 (Div. II, Jan. 4, 2011) – February 11:23

Defendant's Terry, Miranda, consent, and curtilage arguments rejected in case involving officers' investigation of previous evening's gunfire at campsite on national forest service land. United States v. Basher, 629 F.3d 1161 (9th Cir., Jan. 20, 2011) – April 11:02

Cheek swab to obtain DNA sample while charges are pending constitutes search requiring warrant; court order under CrR 4.7 for swab may be okay if supported by probable cause and other safeguards, but record in this case held insufficient to make that determination. State v. Garcia-Salgado, 170 Wn.2d 176 (Oct. 7, 2010) – April 11:10

Majority of court concludes that a search warrant is not needed for law enforcement officers to look at motel registry with motel staff's OK, so long as officers have relevant reasonable individualized suspicion of criminal activity by the subject of their inquiry.

In re Personal Restraint of Nichols, 171 Wn.2d 370 (April 28, 2011) – June 11:24

Deputy sheriff's computer check of jail visitor's name for outstanding warrants and driver license information did not violate her state or federal constitutional privacy rights; also, evidence held sufficient to support her conviction for possession of methamphetamine. State v. Hathaway, 161 Wn. App. 636 (Div. II, May 3, 2011) – September 11:08

United States Supreme Court explores Fourth Amendment issues about attaching and using GPS devices on vehicles; Washington Supreme Court resolved these questions in 2003 Jackson decision adopting a warrant requirement under article I, section 7 of the Washington constitution. United States v. Jones, ___ U.S. ___, 132 S. Ct. 945 (Jan. 23, 2012) – March 12:07

California's all-felony-arrestee DNA statute survives Fourth Amendment challenge. Haskell v. Harris, 669 F.3d 1049 (9th Cir., Feb. 23, 2012) – July 12:05; but see October 2012 LED at page 5 for note that Ninth Circuit has ordered an appellate rehearing in the Haskell case.

Area near home's side entry door located on left wall of mostly-enclosed carport held protected private area under Fourth Amendment; Ninth Circuit rules that federal border agent unlawfully went into that private area rather than going to front door to contact resident. United States v. Perea-Rey, 680 F.3d 1179 (9th Cir., May 31, 2012) – September 12:03

Compliance check by Liquor Control Board using an underage, undercover agent was not a search; also, bar's entrapment and outrageous government conduct challenges fail. Dodge City Saloon v. Liquor Control Board, 168 Wn. App. 388 (Div. II, May 15, 2012) – September 12:13

Split decision rejects constitutional and Privacy Act challenges by senders of text messages that officers obtained from iPhones owned by suspected drug users, and subsequently used in drug deal stings. State v. Hinton, 169 Wn. App. 28 (Div. II, June 26, 2012) and State v. Roden, 169 Wn. App. 59 (Div. II, June 26, 2012) – October 12:21 Status: The Washington Supreme Court is reviewing the case.

Order to empty pockets is a search. United States v. Pope, 686 F.3d 1078 (9th Cir., July 17, 2012) – December 12:13

Trespass-based 4th amendment theory holds that police exceeded scope of home resident's implied invitation for visitors to come onto front porch where officer and K-9 went onto porch, not for the purpose of talking to the resident, but instead for the objectively manifested purpose of conducting search, by having K-9 sniff for marijuana grow. Florida v. Jardines, ___U.S. ___, 133 S. Ct. 1409 (March 26, 2013) – June 13:06

Maryland statute authorizing collection of DNA from all adults arrested for serious felonies survives Fourth Amendment constitutional challenge. Maryland v. King, 133 U.S. 1958 (June 3, 2013) – July 13:03

Trial court erred in allowing prosecutor to argue that refusal to voluntarily submit to warrantless DNA test is evidence of defendant's guilt. State v. Gauthier, 174 Wn. App. 257 (Div. I, April 1, 2013) – July 13:24

Divided court upholds admissibility of evidence against State constitutional challenge under article I, section 7, but justices fail to reach a majority on whether that is (a) because the officers' search was lawful, or (b) instead, because an exception to the washington exclusionary rule applies; Chief Justice Madsen argues for overruling of State v. Jorden, 160 Wn.2d 121 (2007) July 07 LED:18, but no other Justice joins that view. State v. Smith, 177 Wn.2d 533 (June 6, 2013) – August 13:19

Probable cause (see also subtopic of "Staleness of probable cause" in this "Searches" topic)

Supreme Court avoids issues related to bringing drug dog to traffic stop; also, court holds test for probable cause for search warrant for car not met in combination of driver's nervousness, large amount of cash, conflicting stories of driver and passenger about purpose of cash and trip, empty baggies, and driver's prior conviction for heroin delivery. State v. Neth, 165 Wn.2d 177 (2008) – February 09:06

Search under warrant upheld: warrant's description of shed was adequate, and the informant-based probable cause test was met. State v. Danielson, 148 Wn. App. 666 (Div. II, 2009) – April 09:12

Probable cause for searching home computer for (1) numerous items of child pornography and (2) incriminating metadata held not stale despite five-month gap between detective's obtaining of information and the issuance and execution of the search warrant. State v. Garbaccio, 151 Wn. App. 716 (Div. I, 2009) – October 09:15

Government prevails on probable cause issues in case involving: (1) corroborated anonymous tip; (2) one controlled buy by compensated confidential informant with good track record but with disclosed past arrests for crimes of dishonesty; (3) an unsuccessful attempt at a second controlled buy; and (4) a six-day delay in execution of search warrant. United States v. Jennen, 596 F.3d 594 (9th Cir., Feb. 24, 2010) – April 10:08

Probable cause to believe motel room was probationer's current residence was established by (1) credible and specific informant's tip that same morning specifying the room in which he was living, (2) corroboration from motel manager, and (3) CCO's corroborating voice recognition when probationer responded "Who is it?" to knock at door. United States v. Franklin, 603 F.3d 652 (9th Cir., April 29, 2010) – July 10:08

Search warrant held overbroad, and line officers held not immune from civil liability even though superiors and deputy prosecutor approved warrant before judge signed it – 8-3 majority holds officers were not reasonable in believing that warrant was supported by probable cause to search for gang indicia and firearms evidence generally. Millender v. County of Los Angeles, 620 F.3d 1016 (9th Cir., Aug. 24, 2010) – October 10:03 Note: The United States Supreme Court reversed this decision; see entry below this subtopic.

Search warrant probable cause affidavit gets benefit of the doubt and is held to establish confidential informant's recent observation of defendant's marijuana grow operation. State v. Lyons, 160 Wn. App. 100 (Div. III, Feb. 10, 2011) – April 11:11 Note: The Washington Supreme Court reversed this decision; see entry below this subtopic.

Credibility prong of 2-pronged Aguilar-Spinelli test for probable cause met by registered sex offender-informant; also, defective service of search warrant is held not prejudicial under facts of case. State v. Ollivier, 161 Wn. App. 307 (Div. I, April 18, 2011) – September 11:20 Note: The January 2014 LED will report on the Washington Supreme Court's affirmance

of the Court of Appeals decision.

Search warrant affidavit by experienced detective (1) asserting discovery of photo on computer of nude 15- to 17-year-old female with "nude-teens" website label, and (2) describing some additional purportedly corroborating facts held by 2-1 majority to establish probable cause to search computers for child pornography. United States v. Krupa, 658 F.3d 1174 (9th Cir., Sept. 30, 2011) – January 12:13

United States Supreme Court reverses Ninth Circuit decision as detectives get qualified immunity for search warrant application broadly seeking firearms and gang evidence during investigation of shooting that plaintiffs characterized as isolated DV incident; supervisor and deputy prosecutor review a factor in granting qualified immunity. Messerschmidt v. Millender, ___U.S. ___, 132 S. Ct. 1235 (Feb. 22, 2012) – June 12:06

Supreme Court reverses Court of Appeals, holding that while search warrant affidavit establishes that affiant-detective was recently told by CI of CI's observation of defendant's marijuana grow operation, the affidavit fails to establish probable cause because the affidavit fails to state whether the CI's observation was recent. State v. Lyons, 174 Wn.2d 354 (April 26, 2012) – June 12:13

Warrant to search father's home for murder weapon not supported by affidavit that provided reasonable support for inference that adult son of father was connected to the homicide, but that did not support inference that the son had recently visited the father's residence. United States v. Grant, 682 F.3d 827 (9th Cir., June 11, 2012) – October 12:05

Although portion of warrant addressing "firearms, shell cases or knives" was overbroad and lacked probable cause, that portion could be severed. State v. Temple, 170 Wn. App. 156 (Div. I, Aug. 20, 2012) – December 12:16

Split court holds affidavit for search warrant did not establish probable cause to search because, among other things, civilian source was not shown to be able to identify marijuana plant. State v. Shupe, 172 Wn. App. 341 (Div. III, Dec. 11, 2012) – March 13:22

Canine-based probable cause: Proof of results of field work not mandatory for determining probable cause; totality of circumstances must be considered. Florida v. Harris, ___U.S. ___, 133 S. Ct. 1050 (Feb. 19, 2013) – May 13:07

Court holds that affidavit does not add up to probable cause to search home computer for child porn in describing only: (1) suspect's 10-year-old convictions as juvenile for child molesting and possessing "obscene" materials; (2) his recent alleged act of child molesting; and (3) detective-affiant's training and experience and conclusions. United States v. Needham, 718 F.3d 1190 (9th Cir., June 14, 2013) – August 13:07

Where prior affidavit and search warrant for other residences are referenced but not attached or incorporated in a subsequent application for a warrant to search another residence for evidence, the affidavit in the prior application and the issuance of the prior warrant cannot be used to support the subsequent application; also, officer's experience-and-training-based conclusions need foundation. United States v. Underwood, 725 F.3d 1076 (9th Cir., Aug. 6, 2013) – October 13:06

Probable cause for search not negated solely by canine's failure to fully complete his indication. United States v. Thomas, 726 F.3d 1086 (9th Cir., Aug. 8, 2013) – November 13:03

Probationer, parolee searches by CCOs

Supreme Court holds that to justify a warrantless search of a residence in following up a probation violation, a probation officer must have probable cause that the violator resides there; court also rejects the State's argument that the Washington constitution contains an inevitable discovery exception to its exclusionary rule. State v. Winterstein, 167 Wn.2d 620 (2009) – February 10:24

Rulings: 1) deputy sheriffs didn't use community corrections specialist pretextually as "stalking horse"; 2) trial court should have applied probable cause test to determine if officers reasonably concluded probationer resided in premises from which they arrested him; 3) evidence was sufficient on possessing marijuana with intent to deliver. State v. Reichert, 158 Wn. App. 374 (Div. II, Nov. 2, 2010) – February 11:07

Court of Appeals upholds CCO warrantless search of probationer's room, including memory card, under relaxed rule for probationer searches by CCOs. State v. Parris, 163 Wn. App. 110 (Div. II, Aug. 9, 2011) – February 12:22

Protective sweeps

Warrantless emergency home search to look for child sex victim ok, as was protective sweep, but follow-up warrantless entry and pre-warrant walk-through not ok; also, detective's post-Miranda-invocation statements to suspect (1) telling suspect that officer would be seeking a search warrant and (2) stating age of victim were not "interrogation," so incriminating response was volunteered. State v. Sadler, 147 Wn. App. 97 (Div. I, 2008) – January 09:18

Resources of search and seizure law (see also topic "CJTC LED Internet Page")

Note: "Survey of Washington Search and Seizure Law: 2013 Update" Seattle University Law Review article updated by two Washington Supreme Court Justices with assistance from law students at Seattle University. – November 13:03

Retroactivity of appellate court decisions

Retroactivity of Arizona v. Gant and waiver addressed in conflicting Division Two Court of Appeals decisions. State v. McCormick, 152 Wn. App. 536 (Div. II, 2009) – November 09:21

School searches by school personnel

Strip search by middle school staff of 13-year-old student to look for prescription-strength ibuprofen held to violate Fourth Amendment under the totality of circumstances/reasonableness standard for searches by K-12 school authorities. Safford Unified School District # 1 v. Redding, 557 U.S. 364 (2009) – August 09:02

High school administrators' search of student's vehicle in school parking lot upheld as reasonable under school search exception to search warrant requirement. State v. Brown, State v. Duke, 158 Wn. App. 49 (Div. III, 2010) – December 10:18

Search by school resource officer held to qualify as school search under the lower

standards for school searches of the state and federal constitutions. State v. J.M., 162 Wn. App. 27 (Div. I, May 23, 2011) – August 11:17 Note: The Washington Supreme Court reversed this decision; see State v. Meneese entry below this subtopic.

Assistant principal's informant-based search of evasive high school student's backpack upheld under relaxed constitutional standard for searches by K-12 school staff. State v. E.K.P., 162 Wn. App. 675 (Div. II, July 19, 2011) – November 11:16

Supreme Court votes 7-2 to reverse Court of Appeals and hold under article I, section 7 of the Washington constitution that warrantless search by school resource officer (SRO) was not "school search" but instead was police search. State v. Meneese, 174 Wn.2d 937 (Aug. 2, 2012) – October 12:10

Scope of search under warrant

In searching for methamphetamine and sales records and other records under warrant that did not expressly authorize a computer search, officers were not justified in searching suspect's computer. United States v. Payton, 573 F.3d 859 (9th Cir., July 21, 2009) – September 09:06

In case related to federal investigation of drug company and professional baseball steroids scandal, eleven-judge panel sets extensive guidelines for drafting and executing computer search warrants in order to limit "plain view" seizures of computer evidence. United States v. Comprehensive Drug Testing, Inc. (and two other cases consolidated for appeal), 579 F.3d 989 (9th Cir., Aug. 26, 2009) – October 09:06 Note: The 11-judge panel entered a revised majority opinion in this case; see entry below this subtopic.

There is no longer a Ninth Circuit precedential opinion containing the extensive detailed standards that were set forth in an earlier majority decision regarding drafting and executing computer search warrants in order to limit "plain view" seizures of computer evidence. United States v. Comprehensive Drug Testing, Inc., 621 F.3d 1162 (9th Cir., Sept. 13, 2010) – February 11:04

Dismissal of charges held to be required based on detective's seizure and scrutiny of attorney-client-protected papers taken during execution of a search warrant in a child sex abuse investigation. State v. Perrow, 156 Wn. App. 322 (Div. III, 2010) – July 10:24

Securing MV or personal property based on probable cause to search while seeking warrant

Where officers had probable cause to believe a car contained contraband in some unknown area, compartment, or container, the officers lawfully secured the car – including a purse belonging to an occupant as to whom individualized probable cause to arrest did not exist – for a reasonable period while officers sought a search warrant for the car and its contents. State v. Campbell, 166 Wn. App. 464 (Div. III, Feb. 14, 2012) – April 12:16

Securing premises while seeking search warrant

Seizure of residence for over 26 hours before making application for search warrant held to violate Fourth Amendment. United States v. Song Ja Cha, 597 F.3d 995 (9th Cir., March 9, 2010) – July 10:15

Seizure of package in transit

Brief seizure of Express Mail package for canine sniff did not violate Fourth Amendment because package was delivered on time. United States v. Jefferson, 566 F.3d 928 (9th Cir., May 26, 2009) – August 09:04

Staleness of probable cause

Government prevails on probable cause issues in case involving: (1) corroborated anonymous tip; (2) one controlled buy by compensated CI with good track record but with disclosed past arrests for crimes of dishonesty; (3) an unsuccessful attempt at a second controlled buy; and (4) a six-day delay in execution of search warrant. United States v. Jennen, 596 F.3d 594 (9th Cir., Feb. 24, 2010) – April 10:08

Search warrant probable cause affidavit gets benefit of the doubt and is held to establish confidential informant's recent observation of defendant's marijuana grow operation. State v. Lyons, 160 Wn. App. 100 (Div. III, Feb. 10, 2011) – April 11:11 Note: The Washington Supreme Court reversed this decision; see entry below this subtopic.

Supreme Court reverses Court of Appeals, holding that while search warrant affidavit establishes that affiant-detective was recently told by CI of CI's observation of defendant's marijuana grow operation, the affidavit fails to establish probable cause because the affidavit fails to state whether the CI's observation was recent. State v. Lyons, 174 Wn.2d 354 (April 26, 2012) – June 12:13

Standing (see subtopic "Automatic standing" under this "Searches" topic)

Strip searches of arrested persons being booked into jail or holding facility

Every person arrested and held temporarily at holding or other jail facility can be subjected to a routine strip search, so long as it involves only a visual inspection without touching or abusive gestures. The prisoner, however, may be told to manipulate some part of the body. A partial split within the five-Justice majority appears to limit this authority to prisoners who will be placed among other prisoners at the facility. Florence v. Board of Freeholders, ___U.S. ___, 132 S. Ct. 1510 (April 2, 2012) – July 12:04

3 holdings: (1) Terry seizure of witness/suspect was reasonable; (2) arrest was lawful under RCW 10.31.100 because officer had probable cause as to harm to person and/or taking of personal property; (3) but strip search at jail violated chapter 10.79 RCW because suspect's mere nervousness did not justify it, and there was no supervisor approval. State v. Barron, 170 Wn. App. 742 (Div. III, Sept. 18, 2012) – January 13:14

Strip searches of prisoners or jailed persons

Civil Rights Act lawsuit: Under the facts of this case, where no emergency existed and several male correctional officers stood by, 6-5 majority rules that the "strip search" of a male pretrial detainee by a female cadet violated the Fourth Amendment. Byrd v. Maricopa County Sheriff's Department, 629 F.3d 1135 (9th Cir., Jan. 5, 2011) – March 11:12

Waiver of constitutional argument by failure to timely raise

Defendant who pleaded guilty is not allowed to make Gant argument because his guilty plea inherently waived his right to do so. State v. Brandenburg, 153 Wn. App. 944 (Div. II, 2009) – March 10:25

Asking passenger in parked car for ID was not a "seizure"; also, car search challenge fails because theory was not raised at time of trial. State v. Johnson, 156 Wn. App. 82 (Div. II, 2010) – July 10:21

Arrestee's statement from back seat of patrol car that he "would kick [officer's] ass if [he] wasn't in handcuffs," plus other facts, held to support his harassment conviction; vehicle-search-incident challenge held waived because defendant did not raise theory in trial court. State v. Cross, 156 Wn. App. 568 (Div. II, 2010) – September 10:16

Open view, search incident, and waiver issues decided against state in 2-1 decision suppressing evidence seized in car search. State v. Swetz, 160 Wn. App. 122 (Div. II, Feb. 11, 2011) – April 11:11

State's waiver/failure-to-preserve-argument theory rejected in vehicle search incident cases. State v. Robinson, 171 Wn.2d 292 (April 14, 2011) – July 11:19

Where defendant's trial begins after new controlling constitutional interpretation, defendant does not meet Robinson test, and ordinary principles of issue preservation apply. State v. Lee, 162 Wn. App. 852 (Div. II, July 26, 2011) – January 12:24

SELF DEFENSE AND DEFENSE OF OTHERS (Chapter 9A.16 RCW)

Trial court's jury instruction on self defense set the standard too high where only non-deadly force was used by the defendant. State v. Kyllo, 166 Wn.2d 856 (2009) – October 09:14

Defendant in shooting should have been permitted to argue both self-defense and accident where he was facing seven snarling dogs. State v. Werner, 170 Wn.2d 333 (2010) – April 11:10

SENTENCING

Constitution precludes court order banishing defendant from entire county; the order was tied to a SSOSA, so case must be remanded for resentencing. State v. Sims, 152 Wn. App. 526 (Div. II, 2009) – November 09:21

Court of Appeals finds inadequate support for, and therefore sets aside, jury's finding of sentence-enhancing gang aggravator. State v. Bluehorse, 159 Wn. App. 410 (Div. II, Jan. 10, 2011) – May 11:19

Sentencing court lacks discretion to allow defendant to possess a firearm "in military formation or in combat" where firearm restriction is statutorily mandated. State v. Damiani, 162 Wn. App. 1 (Div. II, Feb. 1, 2011) – November 11:25

County jails must provide opportunities for inmates awaiting sentencing to earn good time credit. In re Talley, 172 Wn.2d 642 (Sept. 15, 2011) – January 12:23

Sentence provision against possessing "gang paraphernalia" too vague and therefore void under constitutional due process protection. State v. Villano, 166 Wn. App. 142 (Div. III, Jan. 26, 2012) – April 12:22

Eighth Amendment of United States constitution prohibits mandatory sentence of life without parole for juvenile offender in any circumstance. Miller v. Alabama and Jackson v. Hobbs, ___U.S. ___, 132 S. Ct. 2455 (June 25, 2012) – August 12:04

Jury finding of gang-purposes of conduct held supported. State v. Moreno, 173 Wn. App. 479 (Div. III, Feb. 12, 2013) – April 13:15

SEX OFFENDER REGISTRATION (RCW 9A.44.130-145)

Sex offender registration: Statutory scheme delegating to sheriff the setting of classification level for sex offender held to violate constitutional separation of powers doctrine. State v. Ramos, 149 Wn. App. 266 (Div. II, 2009) – May 09:16

Federal law for sex offender registration: Retroactive application held to violate constitutional ex post facto protection. United States v. Juvenile Male (S.E.), 581 F.3d 977 (9th Cir., Sept. 10, 2009) – November 09:09

2006 federal sex offender registration law regulating interstate sex offender movement does not apply to moves made before effective date. Carr v. United States, ___U.S. ___, 130 S.Ct. 2229 (2010) – July 10:07

SEXUAL EXPLOITATION OF CHILDREN (Chapter 9.68A RCW)

Webcam viewing is "photograph[ing]" under sexual exploitation of a minor statute. State v. Ritter, 149 Wn. App. 105 (Div. III, 2009) – April 09:20

Child porn sting: Prohibition on communicating for immoral purposes with someone a person believes to be a minor by sending an electronic communication held not to be unconstitutionally overbroad or unjustifiably burdensome on free speech. State v. Aljutily, 149 Wn. App. 286 (Div. III, 2009) – May 09:21

Split panel holds that where an adult invited a minor to send him a nude photograph of herself, and she refused, her refusal precluded his prosecution for committing the completed (as opposed to attempted) crime of sexually exploiting a minor. State v. Stribling, 164 Wn. App. 867 (Div. II, Nov. 9, 2011) – March 12:20

In prosecution for attempted promotion of commercial sexual abuse of minor, State must prove defendant knew victim was a minor, but defendant may be convicted even where "victims" are adult undercover police officers. State v. Johnson, 173 Wn.2d 895 (Feb. 23, 2012) – June 12:21

SEXUALLY VIOLENT PREDATOR LAW (Chapter 71.09 RCW)

Media-dubbed "South Hill Rapist" loses challenge to his commitment as a sexually violent predator. In re the Detention of Kevin Coe, 160 Wn. App. 809 (Div. I, March 24, 2011) – May 11:20 Note: The Washington State Supreme Court affirmed the Court of Appeals decision; see entry below this topic.

Media-dubbed "South Hill Rapist" loses challenge to his commitment as a sexually violent predator. In re the Detention of Kevin Coe, 175 Wn.2d 482 (Sept. 27, 2012) – January 13:13

SIXTH AMENDMENT RIGHT TO CONFRONTATION

Sixth Amendment right to confrontation: Lab analyst must be made available for cross examination by defendant in drug case. Melendez-Diaz v. Massachusetts, 557 U.S. 305 (2009) – September 09:02

Sixth Amendment right to confrontation: Statements of robbery victim (who later died prior to trial) to responding officers held "testimonial," and hence inadmissible, under Crawford-Davis confrontation standard. State v. Koslowski, 166 Wn.2d 409 (2009) – September 09:12

Excited utterance on E-911 tape admissible under state and federal constitutional provisions on right to confrontation; but state constitutional protection held to be greater than federal. State v. Pugh, 167 Wn.2d 825 (2009) – April 10:15

Under Sixth Amendment right to confrontation and under RCW 9A.44.020(2)'s "rape shield" provisions, orgy-consent argument by defendant should have been allowed. State v. Jones, 168 Wn.2d 713 (2010) – October 10:10

Police contact with drug suspect was lawful social contact, and officer's request to take his hands from his pockets did not make contact a seizure; show-up ID was not too suggestive; Crawford Sixth Amendment confrontation rule does not apply to suppression hearings. State v. Fortun-Cebada, 158 Wn. App. 158 (Div. I, Oct. 25, 2010) – January 11:15

Sixth Amendment confrontation: Crawford-Davis standard clarified in favor of state in case involving ongoing-emergency statements by dying shooting victim in gas station parking lot; objective look at purposes of both the victim and the questioning officers required. Michigan v. Bryant, ___U.S. ___, 131 S. Ct. 1143 (Feb. 28, 2011) – May 11:03

Sixth Amendment right to confrontation: In prosecution for violation of no-contact order, it was OK to admit certified copy of alleged victim's driver's license as evidence of her identity. State v. Mares, 160 Wn. App. 558 (Div. I, March 14, 2011) – May 11:22

Confrontation clause requires that a defendant be permitted to confront the specific analyst who certifies blood alcohol analysis report. Bullcoming v. New Mexico, ___U.S. ___, 131 S. Ct. 2705 (June 23, 2011) – September 11:02

Detective's testimony regarding out-of-court statements made by non-testifying witness constitutes confrontation clause violation. Ocampo v. Vail, 649 F.3d 1098 (9th Cir., June 9, 2011) – January 12:23

Defendant waived confrontation clause challenge to introduction of laboratory report in lieu of scientist's testimony where he did not demand the scientist's presence at trial as required by Criminal Rule 6.13(b), and he did not object to introduction of the laboratory report. State v. Schroeder, 164 Wn. App. 164 (Div. III, Sept. 29, 2011) – March 12:22

Supreme Court overrules its prior opinions in State v. Kirkpatrick and State v. Kronich in light of United States Supreme Court opinion in Melendez-Diaz. State v. Jasper, State v. Cienfuegos, and State v. Moimoi, 174 Wn.2d 96 (March 15, 2012) – June 12:19

Admission of statements of officer who served merely as interpreter does not violate evidentiary rules or defendant's rights under the confrontation clause under the facts of this case. United States v. Romo-Chavez, 681 F.3d 955 (9th Cir., May 23, 2012) – August 12:11

Victim's out-of-court statements were admissible under the doctrine of "forfeiture by wrongdoing" where the defendant clearly engaged in conduct designed to prevent the victim from testifying at trial. State v. Dobbs, 167 Wn. App. 905 (Div. II, May 1, 2012) – September 12:18 Note: The Washington Supreme Court is reviewing the case.

Scientist may testify as expert regarding another scientist's report without violating the confrontation clause if the report is not being offered into evidence. Williams v. Illinois, ___ U.S. ___, 132 S. Ct. 2221 (June 18, 2012) – October 12:03

Portions of victim's statements to 911 operator and initial statements to police upon arrival at scene were, viewed objectively, made during the course of an ongoing emergency and thus are non-testimonial for confrontation clause purposes. State v. Reed, 168 Wn. App. 553 (Div. I, June 4, 2012) – November 12:18

Radiologist's report explaining that CT scan showed nasal fracture was not "testimonial" within the meaning of case law on Sixth Amendment right to confrontation, and therefore the report was lawfully admitted despite State's failure to call radiologist to testify. State v. Clark, 170 Wn. App. 650 (Div. I, Sept. 17, 2012) – November 12:22

Clerk's minute entry showing service of no contact order is non-testimonial and does not violate the confrontation clause. State v. Hubbard, 169 Wn. App.182 (Div. II, June 29, 2012) – November 12:23

Police officer's testimony that victim/decedent said he feared the defendant violated the confrontation clause; however, court holds that violation is harmless. State v. Fraser, 170 Wn. App. 13 (Div. I, Aug. 13, 2012) – December 12:19

Assault victim's statement to medical personnel at hospital in presence of officer who had previously questioned her at her home and who was collecting evidence from her at the hospital, held to be testimonial for Sixth Amendment confrontation right purposes. State v. Hurtado, 173 Wn. App. 592 (Div. I, Feb. 19, 2013) – June 13:23

SIXTH AMENDMENT RIGHT TO CONTROL ONE'S DEFENSE

Giving affirmative defense instruction to the jury, over the defendant's objection, violates the defendant's Sixth Amendment right to control his defense. State v. Coristine, 177 Wn.2d 533 (May 9, 2013) – August 13:22

SIXTH AMENDMENT RIGHT TO COUNSEL

Sixth Amendment initiation-of-contact rule of Michigan v. Jackson is eliminated in a 5-4 United States Supreme Court decision. Montejo v. Louisiana, 556 U.S. 778 (2009) – July 09:15

SIXTH AMENDMENT RIGHT TO JURY TRIAL

Officer's testimony that defendant was "evasive" during interrogation did not violate Fifth Amendment right to silence; but remark did violate Sixth Amendment by invading province of jury; that error, however, was cured by timely trial court jury instruction. State v. Hager, 171 Wn.2d 151 (March 10, 2011) – May 11:09

No invasion of province of jury occurred with detective's testimony that during interrogation, in order to see if defendant would change his story, he told defendant he was lying; also, evidence is sufficient to support premeditation element of first degree murder. State v. Notaro, 161 Wn. App. 654 (Div. II, May 6, 2011) – September 11:21

No violation of defendant's right to a fair trial where "facility dog" belonging to prosecutor's office is allowed to sit next to developmentally disabled victim while the victim testifies. State v. Dye, 170 Wn. App. 340 (Div. I, Aug. 27, 2012) – December 12:16 Status: The January 2014 LED will contain the Washington Supreme Court's decision affirming the Court of Appeals. See State v. Dye, ___ Wn.2d ___, 309 P.3d 1192 (Sept. 26, 2013).

Triple-murder defendants lose because any improper law enforcement officer testimony suggesting the defendants' guilt or lack of credibility was cured by instruction. State v. Rafay and State v. Burns, 168 Wn. App. 734 (Div. I, June 18, 2012) – August 12:13

STALKING (RCW 9A.46.110)

Two incidents of "criminal harassment" of same person support a conviction for "stalking" along with criminal harassment convictions. State v. Haines, 151 Wn. App. 428 (Div. I, 2009) – September 09:22

Stalking statute's phrase "intentionally and repeatedly harassing or following another person" receives pro-state interpretation. State v. Kintz, 169 Wn.2d 537 (2010) – October 10:13

Evidence held insufficient to convict defendant of stalking, by repeatedly following or harassing, where defendant maintained continuous physical proximity and visual contact with 87-year-old victim while on bus and after following her off of the bus. City of Seattle v. Meah, 165 Wn. App. 453 (Div. I, Dec.12, 2011) – August 12:23

Court of Appeals rejects vagueness and overbreadth constitutional challenges to felony stalking statute. State v. Bradford, 175 Wn. App. 912 (Div. I, August 12, 2013) – October 13:23

TELEPHONE HARASSMENT (RCW 9.61.230)

Defendant's challenges to his telephone harassment convictions for voicemail message to police officer rejected. State v. Alphonse, 147 Wn. App. 891 (Div. I, 2008) – March 09:23

Telephone harassment: Where target heard shouted threat, it did not matter that someone else was holding the phone receiver. State v. Sloan, 149 Wn. App. 736 (Div. II, 2009) – September 09:21

THEFT AND RELATED CRIMES (Chapter 9A.56 RCW)

Evidence is insufficient to support second degree theft conviction where only evidence of value relates to original purchase cost, not to current condition or market value of items stolen. State v. Ehrhardt, 167 Wn. App. 933 (Div. II, May 1, 2012) – September 12:20

Under license revocation provision of RCW 46.20.285, defendant "used" vehicle in the commission of a felony, taking or riding in a motor vehicle without the owner's permission, when he unlocked the vehicle and drove away. State v. Dupuis, 168 Wn. App. 672 (Div. II, June 12, 2012) – November 12:24

Underreporting taxable revenue and underpaying taxes does not establish "theft" of gambling revenues. State v. Lau, 174 Wn. App. 857 (Div. I, May 20, 2013) – September 13:24

Legislature intended to punish unlawful possession of a controlled substance separately from theft of the same substance; defendant may be convicted of both. State v. Denny, 173 Wn. App. 805 (Div. II, Feb. 20, 2013) – May 13:22

THIRD PARTY PERPETRATOR THEORY OF DEFENSE

Third-party-perpetrator argument permissible only where sufficient evidence is presented tending to identify some other person as the perpetrator. State v. Hilton, 164 Wn. App. 81 (Div. III, Sept. 27, 2011) – March 12:24

Triple-murder defendants lose, because "other suspect" evidence was properly limited as speculative. State v. Rafay and State v. Burns, 168 Wn. App. 734 (Div. I, June 18, 2012) – August 12:13

TRAFFIC (Title 46 RCW) (See also "Implied Consent" topic)

Probable cause as to DUI, plus the scientific fact that alcohol dissipates in the body over time, held not to add up to exigent circumstances supporting reaching through doorway to arrest man suspected of being intoxicated and of having driven drunk 1 hour earlier. State v. Hinshaw, 149 Wn. App. 747 (Div. III, 2009) – July 09:20

RCW 46.63.030: Where the infraction of second degree negligent driving did not occur in law enforcement officer's presence, officer could not lawfully issue a citation for that infraction. State v. Magee, 167 Wn.2d 639 (2009) – February 10:23

Where felony DUI charge is based on prior DUIs, the prior DUI charges must have been reduced to convictions at the time of the new driving event. State v. Castle, 156 Wn. App. 539 (Div. I, 2010) – October 10:24

RCW 46.61.024(1)'s felony eluding "willfully" element means that state must prove defendant knew pursuing vehicle was police vehicle. State v. Flora, 160 Wn. App. 549 (Div. I, March 14, 2011) – May 11:18

RCW 46.61.210's failure-to-yield provisions apply only to emergency passing efforts, not to traffic stop circumstances; driver who pulled over to left, instead of right, shoulder of I-5 when signaled to stop for speeding did not violate the statute (or any other statute, it appears). State v. Weaver, 161 Wn. App. 58 (Div. II, April 5, 2011) – July 11:20

Reckless driving is not a lesser included offense of attempt to elude. State v. Hunley, 161

Wn. App. 919 (Div. II, May 17, 2011) – November 11:23

In possessing stolen vehicle, defendant "used" vehicle in commission of felony for purposes of DOL suspension statute. State v. Contreras, 162 Wn. App. 540 (Div. III, July 7, 2011) – January 12:25

Automated traffic safety cameras are not proper subject of initiative power of cities. Mukilteo Citizens for a Simple Government v. City of Mukilteo, 174 Wn.2d 41 (March 8, 2012) – June 12:21

Evidence held sufficient to convict defendant of attempting to elude where defendant immediately accelerated from 25 mph to 50 mph in a 25-mph zone, frightened a pedestrian, ran a stop sign, and immediately exited his vehicle and ran once he stopped his vehicle. State v. Perez, 166 Wn. App. 58 (Div. III, Jan. 24, 2012) – August 12:21

Under license revocation provision of RCW 46.20.285, defendant "used" vehicle in the commission of a felony, taking or riding in a motor vehicle without the owner's permission, when he unlocked the vehicle and drove away. State v. Dupuis, 168 Wn. App. 672 (Div. II, June 12, 2012) – November 12:24

Although city clerks have a mandatory duty to transmit ordinance to the county auditor, the court denies action seeking to compel city clerk to do so because it would have been useless under the facts of this case (traffic camera initiative). Eyman v. McGehee, 173 Wn. App. 684 (Div. I, Feb. 19, 2013) – July 13:25

Physical control defense for car moved safely off the roadway does not apply where defendant neither moved the car nor directed another person to move the car to the safe location. City of Yakima v. Godoy, 175 Wn. App. 233 (Div. III, May 7, 2013) – September 13:16

For crimes with driving under influence as an element, knowledge of harmful side effects of prescription drugs need not be proven by the State, but lack of knowledge may be relevant to affirmative defense. State v. Dailey, 174 Wn. App. 810 (Div. I, May 13, 2013) – September 13:24

TRESPASS (Chapter 9A.52 RCW)

Trespass conviction against K-12 public school student's mother set aside based on: (1) school's failure to fully inform her of her appeal rights at the time the school gave her a notice of trespass, and (2) absence of proof of adequate basis for notice of trespass. State v. Green, 157 Wn. App. 833 (Div. I, Sept. 27, 2010) – February 11:18

UNIFORM CONTROLLED SUBSTANCES ACT AND OTHER DRUG LAWS (Chapter 69.50 RCW) (See also "Forfeiture Law" and "Medical Use of Marijuana Act" topics)

No attorney fee award in drug forfeiture case – family of deceased was not "prevailing party" where family won as to car and $9342 in cash, but lost as to another $57,990 in cash. Guillen v. Contreras, 147 Wn. App. 326 (Div. III, 2008) – January 09:22 Note: The Washington Supreme Court granted review and reversed in part; see entry below this topic.

Citation for "possession of drug paraphernalia" fails "essential elements" test; also, proximity of pipe to back seat passenger held insufficient alone to satisfy constructive possession standard. State v. George, 146 Wn. App. 906 (Div. I, 2008) – February 09:20

Evidence held to support convictions for possessing marijuana with intent to deliver and conspiracy for that same crime. State v. Valencia, 148 Wn. App. 302 (Div. II, 2009) – September 09:14

No "innocent owner" claim is available to estate where marijuana grower's residential property was seized prior to his death. Snohomish Regional Drug Task Force v. Real Property Known As 414 Newberg, 151 Wn. App. 743 (Div. I, 2009) – October 09:21

Drug forfeiture statute: "Knowledge" for purposes of "innocent owner" claim to property gets narrow, anti-government interpretation. In the Matter of the Forfeiture of One 1970 Chevrolet Chevelle and In the Matter of the Forfeiture of One 2004 Nissan Sentra, 166 Wn.2d 834 (2009) – October 09:12

Trading drugs for firearms constitutes possessing the firearms "in furtherance of" the drug trafficking offense. United States v. Mahan, 586 F.3d 1185 (9th Cir. 2009) (decision filed Nov. 16, 2009) – January 10:04

Accomplice who was not present in a school zone at the time of cohort's delivery of controlled substances cannot receive school zone sentence enhancement for the offense. State v. Pineda-Pineda, 154 Wn. App. 653 (Div. I, 2010) – April 10:20

RCW 9.94A.533(5) drugs-in-jail sentencing enhancement does not apply to arrestee with methamphetamine that was discovered in search when he was booked into jail; he did not volitionally bring drugs to jail. State v. Eaton, 168 Wn.2d 476 (2010) – May 10:24

Evidence supports marijuana grower's conviction for possessing marijuana with intent to deliver. State v. O'Connor, 155 Wn. App. 282 (Div. III, 2010) – June 10:23

Sentencing enhancement for illegal drug delivery near school bus route stop: Measuring wheel evidence must be authenticated if it is to be used to prove distance from bus stop of drug-delivery location. State v. Bashaw, 169 Wn.2d 133 (2010) – August 10:15

Considering the totality of all of the evidence seized in a search incident to arrest – (1) a baggie proven to contain methamphetamine; (2) several other baggies containing a similar-appearing residue; (3) the presence of a total of over a dozen baggies; (4) a digital scale; and (4) a straw – the evidence is sufficient to support defendant's conviction for possession of methamphetamine with intent to deliver. State v. Slighte, 157 Wn. App. 618 (Div. II, 2010) – October 10:20

Claimants in RCW 69.50.505 drug forfeiture cases may recover attorney fees even if they are only fractionally successful in their challenges. Guillen v. Contreras, 169 Wn.2d 769 (2010) – November 10:12

Rulings: 1) deputy sheriffs didn't use community corrections specialist pretextually as "stalking horse"; 2) trial court should have applied probable cause test to determine if officers reasonably concluded probationer resided in premises from which they arrested him; 3) evidence sufficient on possessing marijuana with intent to deliver. State v. Reichert, 158 Wn. App. 374 (Div. II, Nov. 2, 2010) – February 11:07

Constructive possession of drugs and firearm established where defendant was sole occupant of truck registered to him. State v. Bowen, 157 Wn. App. 821 (Div. II, Sept.21, 2010) – February 11:19

Proximate cause element of controlled substances homicide, RCW 69.50.415(1), explained in decision affirming conviction. State v. Christman, 160 Wn. App. 741 (Div. III, March 14, 2011) – May 11:21

Initial information about Initiative 502 relating to marijuana. – January 13:03

Announcement: Section 21 of Initiative 502, which prohibits certain conduct relating to opening a package of marijuana or consuming marijuana in view of the general public, has now been codified as RCW 69.50.445. – March 13:03

Announcement: The Criminal Justice Training Commission has revised its Narcotic Detection Canine Performance Standards to remove marijuana as a required odor. – March 13:03

Legislature intended to punish unlawful possession of a controlled substance separately from theft of the same substance; defendant may be convicted of both. State v. Denny, 173 Wn. App. 805 (Div. II, Feb. 20, 2013) – May 13:22

Initiative 502 initial draft rules released – August 13:02

Note regarding DOJ Guidance on Implementation of Initiative 502. – October 13:03

RCW 69.53.010(1)'s bar to using premises for certain drug purposes held not applicable where tenant merely used rented room to sell drugs. State v. Davis, ___Wn. App. ___, 2013 WL 4746819 (Div. II, Sept. 4, 2013) – November 13:23

Initiative 502 final rules adopted – December 13:02

UNLAWFUL PRACTICE OF LAW (RCW 2.48.180)

Unlawful practice of law statute applies to both lawyers and non-lawyers. State v. Janda, 174 Wn. App. 229 (Div. I, Oct. 1, 2012, publication ordered April 9, 2013) – June 13:25

VIENNA CONVENTION AND CONSULAR NOTIFICATION

United States State Department has updated its "Consular Notification and Access Manual." – October 10:03

VOYEURISM (RCW 9A.44.115)

Peeping on two persons having sex supports two voyeurism convictions regardless of whether defendant claims he derived "sexual gratification" from watching only one of the participants. State v. Diaz-Flores, 148 Wn. App. 911 (Div. I, 2009) – May 09:19

WITNESS TAMPERING (Chapter 9A.72 RCW)

Evidence that defendant was attempting to induce witness not to appear for third party's trial is sufficient evidence to prove crime of witness tampering. State v. Andrews, 172 Wn. App. 703 (Div. III, Jan. 8, 2013) – April 13:21

WORKERS' COMPENSATION/INDUSTRIAL INSURANCE

Uniformed Seattle officer working traffic at Seattle construction site and paid by the construction company held to be employee of construction company, not City of Seattle, for workers' compensation purposes. Gary Merlino Const. Co. v. City of Seattle, 167 Wn. App. 609 (Div. I, April 9, 2012) – September 12:22

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INTERNET ACCESS TO COURT RULES & DECISIONS, TO RCWS, AND TO WAC RULES

The Washington Office of the Administrator for the Courts maintains a website with appellate court information, including recent court opinions by the Court of Appeals and State Supreme Court. The address is [http://www.courts.wa.gov/]. Decisions issued in the preceding 90 days may be accessed by entering search terms, and decisions issued in the preceding 14 days may be more simply accessed through a separate link clearly designated. A website at [http://legalwa.org/] includes all Washington Court of Appeals opinions, as well as Washington State Supreme Court opinions. The site also includes links to the full text of the RCW, WAC, and many Washington city and county municipal codes (the site is accessible directly at the address above or via a link on the Washington Courts' website). Washington Rules of Court (including rules for appellate courts, superior courts, and courts of limited jurisdiction) are accessible via links on the Courts' website or by going directly to [http://www.courts.wa.gov/court_rules].

Many United States Supreme Court opinions can be accessed at [http://supct.law.cornell.edu/supct/index.html]. This website contains all U.S. Supreme Court opinions issued since 1990 and many significant opinions of the Court issued before 1990. Another website for U.S. Supreme Court opinions is the Court's own website at [http://www.supremecourt.gov/opinions/opinions.html]. Decisions of the Ninth Circuit of the U.S. Court of Appeals since September 2000 can be accessed (by date of decision or by other search mechanism) by going to the Ninth Circuit home page at [http://www.ca9.uscourts.gov/] and clicking on "Decisions" and then "Opinions." Opinions from other U.S. circuit courts can be accessed by substituting the circuit number for "9" in this address to go to the home pages of the other circuit courts. Federal statutes are at [http://www.law.cornell.edu/uscode/].

Access to relatively current Washington state agency administrative rules (including DOL rules in Title 308 WAC, WSP equipment rules at Title 204 WAC, and State Toxicologist rules at WAC 448-15), as well as all RCW's current through 2007, is at [http://www.leg.wa.gov/legislature]. Information about bills filed since 1991 in the Washington Legislature is at the same address. Click on "Washington State Legislature," "bill info," "house bill information/senate bill information," and use bill numbers to access information. Access to the "Washington State Register" for the most recent proposed WAC amendments is at this address too. In addition, a wide range of state government information can be accessed at [http://access.wa.gov]. The internet address for the Criminal Justice Training Commission (CJTC) LED is [https://fortress.wa.gov/cjtc/www/led/ledpage.html], while the address for the Attorney General's Office home page is [http://www.atg.wa.gov].

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The Law Enforcement Digest is edited by Assistant Attorney General Shannon Inglis of the Washington Attorney General's Office. Questions and comments regarding the content of the LED should be directed to AAG Inglis at Shannon.Inglis@atg.wa.gov. Retired AAG John Wasberg provides assistance to AAG Inglis on the LED. LED editorial commentary and analysis of statutes and court decisions express the thinking of the editor and do not necessarily reflect the views of the Office of the Attorney General or the CJTC. The LED is published as a research source only. The LED does not purport to furnish legal advice. LEDs from January 1992 forward are available via a link on the CJTC Home Page [https://fortress.wa.gov/cjtc/www/led/ledpage.html]

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