



Law Enforcement

2014 SUBJECT MATTER INDEX

Digest

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

2014 SUBJECT MATTER INDEX

LED EDITORIAL NOTE: This annual LED subject matter index covers all LED entries from January 2014 through and including the December 2014 LED. Since 1988, an annual index has been published each December. Also, the LED was established as a monthly publication in 1979, several multi-year subject matter indexes have been published: a 10-year index of LEDs from January 1979 through December 1988; a 5-year subject matter 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, 2004-2008, and 2009-2013 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.

In this 2014 index, 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. Allen, 178 Wn. App. 893 (Div. II, Jan. 14, 2014 – June 14:17" means that the Allen entry appears in the June 2014 LED starting at page 17.

Through 2011, the annual subject matter index appeared in the December LED. Since 2012, the annual subject matter index has been published as a separate, stand-alone document that, like the monthly LEDs, can be found on the CJTC's LED webpage.

ACCOMPLICE LIABILITY (RCW 9A.08.020)

Evidence held sufficient to convict driver as accomplice to first degree premeditated murder in deaths of four Lakewood police officers; also exigent circumstances justified warrantless entry into defendant's hotel room. State v. Allen, 178 Wn. App. 893 (Div. II, Jan. 14, 2014) – June 14:17

AMERICANS WITH DISABILITIES ACT

Police officer's Attention Deficit Hyperactivity Disorder (ADHA) does not substantially limit major life activities of working or interacting with others and accordingly is not a "disability" under Americans with Disabilities Act (ADA). Weaving v. City of Hillsboro, 763 F.3d 1106 (9th Cir., Aug. 15, 2014) – October 14:07

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

Reasonable suspicion found for DUI stop in experienced trooper's observation of weaving within lane and crossing fog line three times. State v. McLean, 178 Wn. App. 236 (Div. II, Oct. 22, 2013) – March 14:21

Split 11-judge panel upholds stop by border patrol agents, holding that facts, including the experience of the border patrol agents, add up to reasonable suspicion of smuggling of aliens or drugs. United States v. Valdes-Vega, 738 F.3d 1074 (9th Cir., Dec. 24, 2013) – April 14:08

Anonymous 911 call about non-threatening man with a gun in a high crime area of Seattle did not provide reasonable suspicion for Terry stop. State v. Cardenas-Muratalla, 179 Wn. App. 307 (Div. I, Feb. 3, 2014) – May 14:19

911 calls by unknown citizens, officers' talk with on-scene witness, and officers' attempt to corroborate report about possible underage gun possession held not to add up to reasonable suspicion for investigative stop. State v. Z.U.E., 178 Wn. App. 769 (Div. II, Jan 7, 2014) – May 14:23 Status: Review is pending in the Washington Supreme Court; oral argument was heard 9/18/14; awaits decision.

Anonymous 911 call by cell phone claiming pickup truck had just run caller's car off the road held by United States Supreme Court under the Fourth Amendment to provide reasonable suspicion justifying a stop for the ongoing crime of DUI despite lack of corroboration by responding officer of erratic driving. Navarette v. California, ___ U.S. ___, 134 S. Ct. 1683 (April 22, 2014) – June 14:03

Officer's misreading of license plate, which returned as stolen, does not provide reasonable articulable suspicion for traffic stop. State v. Creed, 179 Wn. App. 534 (Div. II, Feb. 20, 2014) – June 14:15 Status: On July 8, 2014 the Washington Supreme Court denied review.

Refusal to perform FSTs held admissible. State v. Mecham, 181 Wn. App. 932 (Div. I, June 23, 2014) – July 14:23. Status: Review is pending in the Washington Supreme Court; oral argument is scheduled for March 17, 2015.

Lawsuit must go to jury on lawfulness of stop of car based on mistake by Automatic License Plate Reader (ALPR) with no attempt by officers to corroborate the ALPR hit; excessive force and de facto arrest issues also must go to jury. Green v. City and County of San Francisco, 751 F.3d 1039 (9th Cir., May 12, 2014) – August 14:11

Four rulings by Washington Supreme Court under Washington constitution, article I, section 7: 1) frisk was justified by late hour, plus officer's 1-on-1 contact on street with traffic violator, plus officer's knowledge that detainee had falsely denied possessing a weapon in a contact a week before when the detainee in fact was discovered in earlier contact to have Derringer-style gun in his pocket; 2) fruit of poisonous tree doctrine is

not applicable to frisks; 3) officer-safety considerations did not support search of six-by-four-by-one-to-two-inch lightweight, hard, opaque box lawfully taken from detainee's pocket; 4) consent to search box was not established to be voluntary. State v. Russell, 180 Wn.2d 860 (July 10, 2014) – September 14:07

Pointing guns and handcuffing a shooting suspect did not transform investigatory stop into an arrest, and under Fourth Amendment officers had reasonable suspicion to make stop based on anonymous 911 call. United States v. Edwards, 761 F.3d 977 (9th Cir., July 31, 2014) – October 14:10

At the point when officers became reasonably convinced that a 911 phone call about a man threatening a woman with a shotgun was bogus, they were required to release the suspect instead of continuing to question him while he was cuffed and in a patrol car. State v. Saggars, ___ Wn. App. ___, 322 P.3d 1034 (Div. I, Aug. 11, 2014) – October 14:21

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

Leaving loaded gun at home cannot be “legal cause” of injury to child “B” where child “A” found the loaded gun at home and took it to school where it accidentally discharged injuring child “B”. State v. Bauer, 180 Wn.2d 929 (July 17, 2014) – September 14:14

ATTORNEY-CLIENT PRIVILEGE

Detective's conduct in listening to tapes of several telephone conversations between a defendant and his attorney was “unconscionable,” giving rise to a presumption of prejudice that can be overcome by the State only by proof beyond a reasonable doubt; case is remanded for hearing for the State to try to meet that standard. State v. Pena-Fuentes, 179 Wn.2d 80 (Feb. 6, 2014) – April 14:20

ATTORNEY GENERAL OPINIONS (STATE OF WASHINGTON)

Attorney General Opinion 2014 No. 2: Washington Attorney General opines that Initiative 502 establishing system for licensing marijuana producers, processors, and retailers does not preempt local ordinances. – March 14:03

Washington Attorney General opines that convictions in foreign countries for Washington-equivalent felonies and serious offenses can bar persons in Washington from firearms possession and can disqualify them from obtaining a concealed pistol license. The opinion notes: “[b]ecause your question focuses on felonies and serious offenses, we do not address the question of whether the same analysis applies to the misdemeanors enumerated in RCW 9.41.040(2)(a)(i).” Attorney General Opinion 2014 No. 6 – August 14:03

BOMB THREAT (RCW 9.61.160)

Threat to bomb must target a location in order to violate statute; threat to particular persons but not identifying a structure or location, to make those persons “go boom” did not violate the statute. State v. Hendrickson, 177 Wn. App. 67 (Div. III, Oct. 1, 2013) – February 14:24

BURGLARY (Chapter 9A.52 RCW)

Area under home held to be part of dwelling under burglary statutes even though: (1) it was not a living area and no one lived in the area under the home, and (2) the area under the home was not directly accessible from the living area above. State v. Moran, 181 Wn. App. 316 (Div. I, May 19, 2014) – July 14:16

Abandonment is not a defense to the crime of residential burglary. State v. Olson, ___ Wn. App. ___, 329 P.3d 121 (Div. I, July 7, 2014) – September 14:16

Illegal possession of a firearm is not a crime against property and thus cannot be the predicate crime for first degree burglary. State v. Kindell, 181 Wn. App. 844 (Div. II, June 17, 2014) – September 14:21

CIVIL LIABILITY

Civil Rights Act lawsuits

Qualified immunity granted to officer where unanimous United States Supreme Court holds that Fourth Amendment case law does not clearly establish prohibition on warrantless entry into curtilage (high-fence-and-gate-enclosed front yard) in hot pursuit of misdemeanor whose offense was disobeying an order to stop. Stanton v. Sims, ___ U.S. ___, 134 S. Ct. 3 (Nov. 4, 2013) – January 14:03

On October 28, 2013, the Ninth Circuit Court of Appeals ordered rehearing en banc in Gonzalez v. City of Anaheim, 715 F.3d 766 (9th Cir., May 13, 2013) Sept 13 LED:11; in the May 13, 2013 decision, a 3-judge panel ruled in favor of City of Anaheim in use of deadly force case involving a non-compliant motorist attempting to drive away with officers inside and outside of the vehicle; the panel decision may not be cited. Gonzalez v. City of Anaheim, 733 F.3d 979 (9th Cir., Oct. 28, 2013) – January 14:03

Prosecutor is entitled to absolute prosecutorial civil immunity for filing state court criminal charges against an airline passenger. Heinemann v. Satterberg, 731 F.3d 914 (9th Cir., Sept. 24, 2013) – January 14: 07

Police chief and officer are entitled to qualified immunity where, primarily to protect a misbehaving, difficult-to-control 11-year-old from running into traffic, they handcuffed him and transported him from school to a relative's care. C.B. v. City of Sonora, 730 F.3d 812 (9th Cir., Sept. 12, 2013) – January 14:08. Note that this decision was reversed by a 7-4 decision of an 11-judge Ninth Circuit panel. See entry below in this subtopic.

Inmate does not engage in First Amendment Free Speech protected activity when serving a summons and complaint on a prison official on behalf of another inmate. Blaisdell v. Frappiea, 729 F.3d 1237 (9th Cir., Sept. 10, 2013) – January 14:10

Deadly force case must go to jury where, among other things, no officer gave warning before fatal shooting; Ninth Circuit applies Fourth Amendment standard to case grounded in California common law. Hayes v. County of San Diego, 736 F.3d 1223 (9th Cir., Dec. 2, 2013) – March 14:05

Officers are entitled to qualified immunity from damages under Messerschmidt v. Millender where they consulted with prosecutors before presenting the warrants at issue to judicial officers. Armstrong v. Asselin, 734 F.3d 984 (9th Cir., Nov. 1, 2013) – March 14:09

Ninth Circuit will reconsider decision that held that police chief and officer are entitled to qualified immunity where, primarily to protect a misbehaving, difficult-to-control 11-year-old from running into traffic, they handcuffed him and transported him from school to a relative's care. On February 3, 2014, the Ninth Circuit withdrew the three-judge panel's decision in C.B. v. City of Sonora, 730 F.3d 816 (9th Cir., Sept. 12, 2013) as reported in the January 2014 LED beginning at page 8. – April 14:08. Note that a 7-4 decision subsequently reversed the 3-judge panel's decision. See entry below this subtopic.

Civil Rights Act facial constitutional challenge to city ordinance: Split court declares to be unconstitutional a City of Los Angeles ordinance making it a misdemeanor for a hotel/motel operator to deny police random access to guest register information; ordinance held to violate Fourth Amendment rights of hotel/motel operators. Patel v. City of Los Angeles, 738 F.3d 1058 (9th Cir., Dec. 24, 2013) – April 14:09 Status: On October 20, 2014, the United States Supreme Court granted the request of the City of Los Angeles for review.

Officers' initial entry into room of mentally ill individual was justified; however, there are triable issues of fact as to whether officers' second entry was justified; court also finds triable issues of fact on excessive force claim; and on issue of first impression, holds that Title II of the Americans With Disabilities Act (ADA) applies to arrests. Sheehan v. City and County of San Francisco, 743 F.3d 1211 (9th Cir., Feb. 21, 2014) – May 14:04 Status: On November 25, 2014, the United States Supreme Court granted review; oral argument has not yet been scheduled.

11-judge panel overturns 3-judge panel on deadly force issue in case involving physically resisting arrestee trying to drive away while officer attempting to arrest him was inside his car. Gonzalez v. City of Anaheim, 747 F.3d 789 (9th Cir., March 31, 2014) – June 14:07

Officers did not use excessive force in fatally shooting suspect who led them on a 45-minute high-speed chase, tried to seriously hurt himself upon exiting his vehicle, tried to provoke officers into shooting him, and then advanced on officers holding a large rock over his head. Lal v. State of California, 746 F.3d 1112 (9th Cir., March 31, 2014) – June 14:10

California's all felony-arrestee DNA legislation survives Fourth Amendment-based request for injunction. Haskell v. Harris, 745 F.3d 1269 (9th Cir., March 20, 2014) – June 14:11

Ninth Circuit panel dismisses lawsuit brought by individual mistakenly arrested and detained for a month on an arrest warrant for another individual with the same name. Rivera v. County of Los Angeles, 745 F.3d 384 (9th Cir., March 12, 2014) – June 14:12

Officers' use of deadly force against fleeing driver who was engaging in "outrageously reckless driving" for an extended period and who posed a "grave public safety risk" did not violate Fourth Amendment. Plumhoff v. Rickard, ___ U.S. ___, 134 S. Ct. 2012 (May 27, 2014) – July 14:03

Fifth Circuit's affirmance of summary judgment for officer in deadly force case reversed because the Fifth Circuit did not apply review standard that favors plaintiffs. Tolan v. Cotton, ___ U.S. ___, 134 S. Ct. 1861 (May 5, 2014) – July 14:05

Even though plaintiff was eventually convicted of murder in re-trial, agency may be sued under Monell based on detective's admittedly routine "ploy" in his interrogations in the 1990s, a ploy in which he did not give Miranda warnings in custodial interrogations when he felt that the suspect would not waive. Jackson v. Barnes, 749 F.3d 755 (9th Cir., April 15, 2014) – July 14:08

Sworn court testimony outside the scope of ordinary job duties is entitled to First Amendment protection. Lane v. Franks, ___ U.S. ___, 134 S. Ct. 2369 (June 19, 2014) – August 14:08

Ordinance prohibiting the use of a vehicle as living quarters is held unconstitutionally vague. Desertrain v. City of Los Angeles, 754 F.3d 1147 (9th Cir., June 19, 2014) – August 14:10

"Rectum-packing" plaintiff/arrestee's allegations that officers lied to doctor to get doctor to do a non-consenting, non-emergent warrantless extraction of a baggie of drugs from his rectum must go to trial. George v. Edholm, 752 F.3d 1206 (9th Cir., May 28, 2014) – August 14:10

Lawsuit must go to jury on lawfulness of stop of car based on mistake by Automatic License Plate Reader (ALPR) with no attempt by officers to corroborate the ALPR hit; excessive force and de facto arrest issues also must go to jury. Green v. City and County of San Francisco, 751 F.3d 1039 (9th Cir., May 12, 2014) – August 14:11

Twenty-seven month confinement in intensive management unit (IMU) without periodic meaningful review of status deprives inmate of due process; however, prison officials are entitled to qualified immunity in this case. Brown v. Oregon Department of Corrections, 751 F.3d 983 (9th Cir., April 29, 2014) – August 14:11

Plaintiff failed to state or support failure-to-train claims against county or sheriff. Flores v. County of Los Angeles, 758 F.3d 1154 (9th Cir., July 14, 2014) – September 14:05

Case must go to trial where officers entered a home without a warrant, looking for intruders, pointed guns at teenage boys present in the home, shot the family dog, and used force against homeowner who recently had back surgery; viewing the factual allegations in the best light for the plaintiffs, the officers' warrantless entry was not justified by emergency or exigent circumstances. Sandoval v. Las Vegas Metropolitan Police Dep't, 756 F.3d 1154 (9th Cir., July 1, 2014) – September 14:07

Prison officials' denial of cataract surgery to inmate based on "one eye" policy amounts to deliberate indifference. Colwell v. Bannister, 763 F.3d 1060 (9th Cir., Aug. 14, 2014) – October 14:07

Prison guard's alleged detailed reading of letter from prisoner to his attorney held to violate Sixth Amendment. Nordstrom v. Ryan, 762 F.3d 903 (9th Cir., Aug. 11, 2014) – October 14:08

Jury must decide whether fatal shooting by four police officers was justified under the facts. Cruz v. City of Anaheim, 763 F.3d 1076 (9th Cir., Aug. 28, 2014) – October 14:05

Suspicionless stop of vehicle on a highway to check for compliance with Fish and Game laws does not qualify as an administrative stop and search under the facts of this case; accordingly, stop violated the Fourth Amendment, and, because law was clearly established against such a stop, officers are not entitled to qualified immunity. Tarabochia v. Adkins, ___ F.3d ___, 2014 WL 4413235 (9th Cir., Sept. 9, 2014) – November 14:02

Officers held to have demonstrated deliberate indifference or reckless disregard in failing to disclose compelling exculpatory evidence to the prosecutor. Tatum v. Moody, ___F.3d ___, 2014 WL 4627967 (9th Cir., Sept. 17, 2014) – November 14:05

Officers are entitled to qualified immunity for detaining and transporting an unresponsive, 11-year-old student from school grounds, but they are not entitled to qualified immunity for handcuffing him and leaving him in handcuffs during a half-hour transport to his uncle across town. C.B. v. City of Sonora, ___F.3d ___, 2014 WL 5151632 (9th Cir., October 15, 2014 – December 14:02

Lawsuits based on negligence

Public duty doctrine does not protect county from liability where dispatcher allegedly gave assurances that triggered rescue doctrine. Mita v. Guardsmark, LLC, 182 Wn. App. 76 (Div. III, June 24, 2014) – September 14:18

Lawsuits based on theories other than Civil Rights Act or negligence

Court of Appeals rejects lawsuit against county and deputy sheriffs alleging invasion of privacy through intentionally unlawful search of home; consent of person who appeared to have authority to consent precludes the lawsuit; different result might have occurred if a criminal prosecution were involved because “apparent authority” will not justify a consent search under article I, section 7 of the Washington constitution. Youker v. Douglas County, 178 Wn. App. 793 (Div. III, Jan. 9, 2014) – May 14:17

In WSP Taser-dart-training case, Court of Appeals allows a trooper to sue WSP, applying the employer-intent exception to the workers’ compensation statutory provisions that generally give employers immunity from employee lawsuits for injuries at work. Michelbrink v. WSP, 180 Wn. App. 656 (Div. II, April 23, 2014) – July 14:22 Status: On December 4, 2014, the Washington Supreme Court granted review and remanded the case to the Court of Appeals with direction to the lower court to reconsider its decision in light of Walston v. The Boeing Company, a September 18, 2014 Washington Supreme Court decision.

The Washington Law Against Discrimination (WLAD), chapter 49.60 RCW, creates a cause of action for failure to reasonably accommodate employee religious practices. Kumar v. Gate Gourmet, 180 Wn.2d 481 (May 22, 2014) – August 14:21

Ninth Circuit affirms jury verdict in favor of officer based on termination in retaliation for testifying in Fair Labor Standards Act (FLSA) lawsuit. Avila v. Los Angeles Police Department, 758 F.3d 1096 (9th Cir., July 10, 2014) – September 14:06

Police officer's Attention Deficit Hyperactivity Disorder (ADHA) does not substantially limit major life activities of working or interacting with others and accordingly is not a "disability" under Americans with Disabilities Act (ADA). Weaving v. City of Hillsboro, 763 F.3d 1106 (9th Cir., Aug. 15, 2014) – October 14:07

CJTC LED INTERNET PAGE

Note regarding accessibility on LED page of 2013 LED subject matter index and 2009-2013 five-year subject matter index – February 14:02

Note regarding 2014 updating of three articles/outlines by John Wasberg on: (1) initiation-of-contact restrictions under the Fifth Amendment (article); (2) arrest, search and seizure and miscellaneous legal update topics (outline); and (3) identification procedures (article) – August 14:03

Note that the 2014 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 – September 14:03

Announcement regarding change in Law Enforcement Digest Editor: Assistant Attorney General Shelley Williams becomes LED Editor beginning with the November 2014 LED, taking over from AAG Shannon Inglis. – October 14:03

CORPUS DELICTI DOCTRINE (Common law and RCW 10.58.035)

Corpus delicti for manslaughter established by blood spatter evidence; but defendant should have been allowed to present evidence of her alleged PTSD and battered person syndrome. State v. Green, 182 Wn. App. 133 (Div. II, June 24, 2014) – September 14:19

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

State is not required under discovery-of-evidence protections of CrR 4.7, RCW 10.01.160, or article I, section 22 of the Washington Constitution to pay the cost of duplicating a 911 recording for a non-indigent defendant. State v. Brown, 178 Wn. App. 950 (Div. III, Jan. 16, 2014) – May 14:22

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

California's all felony-arrestee DNA legislation survives Fourth Amendment-based request for injunction. Haskell v. Harris, 745 F.3d 1269 (9th Cir., March 20, 2014) – June 14:11

DOMESTIC VIOLENCE (INCLUDING PROTECTION ORDERS)

"Misdemeanor crime of domestic violence" under federal firearms conviction-based prohibition on possession of firearms broadly interpreted to include common law battery. United States v. Castleman, ___ U.S. ___, 134 S. Ct. 1405 (March 26, 2014) – May 14:03

DUE PROCESS PROTECTION, INCLUDING BRADY REQUIREMENTS ON GOVERNMENT

Court of Appeals holds that statutory provision precluding appeal of license revocations by individuals who obtain ignition interlock devices violates substantive constitutional Due Process protections because statutory provision bears no rational relationship to legitimate state interests. Nielsen v. Department of Licensing, ___ Wn. App. ___, 309 P.3d 1221 (Div. I, Sept. 30, 2013) – January 14:23

Prosecution violated Brady by failing to disclose impeachment evidence relating to a government witness. Amado v. Gonzalez, 734 F.3d 936 (9th Cir., Oct. 30, 2013) – February 14:09 Note: This opinion was withdrawn and a new opinion was issued on July 11, 2014; see below this topic.

No right to hearing on Governor’s cancellation of Indeterminate Sentencing Review Board (ISRB) decision that had granted parole. In re Lain, 179 Wn.2d 1 (Nov. 7, 2013) – February 14:15

Informant’s previous crimes and his incentive to reduce his future criminal liability does not make ATF’s use of him in sting so outrageous as to violate the universal sense of justice under Fourteenth Amendment’s Due Process clause. United States v. Hullaby, 736 F.3d 1260 (9th Cir., Dec. 4, 2013) – March 14:03

Prosecution violated Brady by failing to disclose impeachment evidence relating to a government witness. Amado v. Gonzalez, 758 F.3d 1119 (9th Cir., July 11, 2014) – September 14:05

Under constitutional Due Process protections, juror’s question to officer that asked if defendant had asked why he was arrested or if he seemed surprised should not have been posed to officer by trial court. State v. Terry, 181 Wn. App. 880 (Div. III, June 19, 2014) – September 14:20

Evidence of forensic scientist’s “long history of incompetence” is not material where there was no evidence of cross contamination, thus there is no Brady violation. State v. Davila, ___ Wn. App. ___, 2014 WL 4114314 (Div. III, Aug. 21, 2014) – October 14:18

Officers held to have demonstrated deliberate indifference or reckless disregard in failing to disclose compelling exculpatory evidence to the prosecutor. Tatum v. Moody, ___ F.3d ___, 2014 WL 4627967 (9th Cir., Sept. 17, 2014) – November 14:05

ELECTRONIC SURVEILLANCE AND RECORDING (Chapter 9.73 RCW)

Privacy Act (chapter 9.73 RCW) violated by man’s secret audio recording of one-on-one kitchen conversation with brother-in-law where the man suspected the brother-in-law of molesting the man’s underage daughters. State v. Kipp, 179 Wn.2d 718 (Feb. 6, 2014) – April 14:14

Defendant’s text messages to arrestee’s cellular telephone were “private” communications within the meaning of the Privacy Act, chapter 9.73 RCW, and detective’s opening, reading, and responding to incoming text messages (posing as the recipient) was an “interception” in violation of the Privacy Act. State v. Roden, 179 Wn.2d

893 (Feb. 27, 2014) – May 14:13 (See also the entry at page 22 of this Index regarding a ruling under the Washington constitution, article I, section 7, in a companion case with similar facts, State v. Hinton, 179 Wn.2d 862 (Feb. 27, 2014) May 14:08))

Privacy Act, chapter 9.73 RCW, exemption for in-car videos applies only when there is pending litigation, not to circumstances where there is only a possibility of litigation. Fisher Broadcasting-Seattle TV LLC dba KOMO 4 v. City of Seattle and Seattle Police Department, 180 Wn.2d 515 (June 12, 2014) – August 14:16

EVIDENCE LAW

Where defendant was the cause of witness's absence at trial, defendant forfeited his Sixth Amendment right to confront the witness, and he also automatically waived any hearsay objection regarding the statements of the missing witness. State v. Dobbs, 180 Wn.2d 1 (March 13, 2014) – August 14:21

Corpus delicti for manslaughter established by blood spatter evidence; but defendant should have been allowed to present evidence of her alleged PTSD and battered person syndrome. State v. Green, 182 Wn. App. 133 (Div. II, June 24, 2014) – September 14:19

Detective's testimony regarding a conversation between the defendant and an informant, where the detective was present with the informant and heard only the words of the informant, is inadmissible hearsay; Sixth Amendment right to confrontation also implicated. State v. Hudlow, ___ Wn. App. ___, 331 P.3d 90 (Div. III, May 13, 2014, motion to publish granted July 15, 2014) – September 14:23

Digital photos and videos depicting sex abuse of child sufficiently authenticated by child's grandmother even though she did not do the recording and was not present when the recordings were made. State v. Sapp, ___ Wn. App. ___, 2014 WL 3928834 (Div. III, Aug. 12, 2014) – October 14:20

FAIR LABOR STANDARDS ACT

Ninth Circuit affirms jury verdict in favor of officer based on termination in retaliation for testifying in Fair Labor Standards Act (FLSA) lawsuit. Avila v. Los Angeles Police Department, 758 F.3d 1096 (9th Cir., July 10, 2014) – September 14:06

FALSE OR MISLEADING STATEMENT TO A PUBLIC SERVANT (RCW 9A.76.175)

Sound Transit fare enforcement officers are not "public servants" for purposes of RCW 9A.76.175, which prohibits making false or misleading statements to a public servant. State v. K.L.B., 180 Wn.2d 735 (June 26, 2014) – August 14:20

FIREARMS LAWS (Chapter 9.41 RCW) AND OTHER WEAPONS LAWS

Statute prohibiting possession of firearm by person released on bond after committing a serious offense is not unconstitutional under article I, section 24 of the Washington State constitution or the Second Amendment of the United States constitution. State v. Jorgenson, 179 Wn.2d 145 (Nov. 21, 2013) – February 14:14

Ninth Circuit rejects Second Amendment challenge to federal firearms statute that prohibits the possession of a firearm by persons convicted of a domestic violence misdemeanor. United States v. Chovan, 735 F.3d 1127 (9th Cir., Nov. 18, 2013) – March 14:09

“Misdemeanor crime of domestic violence” under federal firearms conviction-based prohibition on possession of firearms broadly interpreted to include common law battery. United States v. Castleman, ___ U.S. ___, 134 S. Ct. 1405 (March 26, 2014) – May 14:03

Evidence on State’s constructive possession theory held to be sufficient to support convictions of firearm possession crimes in two cases, insufficient to support possessing stolen firearm and unlawful firearm possession convictions in another case, in prosecutions of Maurice Clemmons’ accomplices. State v. Davis, Davis, and Nelson, 176 Wn. App. 849 (Div. II, Sept. 20, 2013) – June 14:20 Status: On December 24, 2014, the Washington Supreme Court reversed the Court of Appeals on the the lower court’s rulings that affirmed the possession convictions, ruling that there was insufficient evidence of either constructive or actual possession.

Ninth Circuit panel upholds firearms storage and ammunition sales ordinances against Second Amendment challenge. Jackson v. City and County of San Francisco, 746 F.3d 953 (9th Cir., March 25, 2014) – July 14:11

“Place of abode” exception in display-of-weapon statute, RCW 9.41.270, does not apply to display of weapon in one’s back yard. State v. Owens, 180 Wn. App. 846 (Div. II, April 29, 2014) – July 14:20

Washington Attorney General opines that convictions in foreign countries for Washington-equivalent felonies and serious offenses can bar persons in Washington from firearms possession and can disqualify them from obtaining a concealed pistol license. The opinion notes: “[b]ecause your question focuses on felonies and serious offenses, we do not address the question of whether the same analysis applies to the misdemeanors enumerated in RCW 9.41.040(2)(a)(i).” Attorney General Opinion 2014 No. 6 – August 14:03

Former felon whose rights were automatically restored under Montana state statute, but who, as a former felon, could not carry a concealed weapon under Montana law, was properly prohibited from possessing a firearm under federal law, and such prohibition does not violate the Second Amendment. Van Der Hule v. Holder, 759 F.3d 1043 (9th Cir., July 16, 2014) – September 14:04

City ordinance that prohibits carrying “dangerous” knife does not violate right to bear arms under article I, section 24 of Washington constitution or Second Amendment to federal constitution. City of Seattle v. Evans, 182 Wn. App. 188 (Div. I, June 30, 2014) – September 14:17 Status: On December 2, 2014, the Washington State Supreme Court granted review; oral argument has not yet been scheduled.

FIRST AMENDMENT (FREEDOM OF SPEECH)

Inmate does not engage in First Amendment Free Speech protected activity when serving a summons and complaint on a prison official on behalf of another inmate. Blaisdell v. Frappiea, 729 F.3d 1237 (9th Cir., Sept. 10, 2013) – January 14:10

FORFEITURE LAW (See also “Uniform Controlled Substances Act”)

Department of Fish and Wildlife statute authorizing seizure of item for evidentiary purposes without any notice requirement does not preclude a subsequent decision to pursue forfeiture by giving notice invoking forfeiture procedures. Washington State Dep’t of Fish and Wildlife v. 1999 Ford F530 Pickup, ___ Wn. App. ___, 2014 WL 3929881 (Div. III, July 17, 2014) – September 14:16

IDENTIFICATION PROCEDURES: PHYSICAL LINEUPS, PHOTO LINEUPS, AND SHOWUPS

FBI agent’s process in seeking eyewitness identification from a suspected robbery accomplice was flawed for not admonishing that suspects might not be in photo lineup, but the process was not impermissibly suggestive, so jury could assess what weight to give the identification evidence. United States v. Carr, 761 F.3d 1068 (9th Cir., Aug. 4, 2014) – October 14:08

IDENTITY THEFT (Chapter 9.35 RCW)

Identity theft statute requires knowledge that identification information belongs to another person. State v. Zeferino-Lopez, 179 Wn. App. 592 (Div. I, Feb. 24, 2014) – July 14:24

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

DUI statute does not mandate continuous visual observation of suspect during fifteen-minute “observation period”; rather State need only present prima facie evidence (1) that suspect did not vomit or have anything to eat, drink or smoke for at least fifteen minutes prior to the administration of the breath test; and (2) that the suspect did not have any foreign substances in his or her mouth at the beginning of the fifteen minute observation period. State v. Mashek, 177 Wn. App. 749 (Div. II, Nov. 13, 2013) – March 14:23

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

Detective’s self-styled Miranda warnings held inadequate, so the defendant’s confessions during interrogation and at trial are held inadmissible and not evidence for any purpose. Lujan v. Garcia, 734 F.3d 917 (9th Cir., Oct. 29, 2013) – March 14:13

Mirandized suspect’s reference to attorney during custodial interrogation held to not be an unequivocal invocation of his right to attorney under Edwards v. Arizona, so questioning was OK to continue. State v. Herron, 177 Wn. App. 96 (Div. III, Oct. 3, 2013) – April 14:25

Custody for Miranda purposes found for 12-year-old who was subjected to accusatory and deceptive questioning at police station. United States v. I.M.M., 747 F.3d 754 (9th Cir., March 31, 2014) – June 14:08

Confession of 18-year-old suspect with 65 IQ held involuntary under the totality of the circumstances, including officers’ false promises of leniency and of confidentiality, and

their deception about the purpose of the questioning being other than criminal investigation. United States v. Preston, 751 F.3d 1008 (9th Cir., May 12, 2014) – July 14:06

Even though plaintiff was eventually convicted of murder in re-trial, agency may be sued under Monell based on detective's admittedly routine "ploy" in his interrogations in the 1990s, a ploy in which he did not give Miranda warnings in custodial interrogations when he felt that the suspect would not waive. Jackson v. Barnes, 749 F.3d 755 (9th Cir., April 15, 2014) – July 14:08

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, 180 Wn.2d 407 (May 8, 2014) – July 14:12

Washington officers investigating a homicide lawfully obtained Miranda waiver because Miranda-based initiation-of-contact bar was not triggered where: (1) suspect earlier asserted Canadian Charter right to attorney to Canadian officers investigating Canadian immigration law crime, and (2) the Canadian officers were not acting as agents of the Washington officers. State v. Trochez-Jimenez, 180 Wn.2d 445 (May 8, 2014) – July 14:15

Miranda warnings did not become stale in 3.5 hours despite fact that interrogators changed. State v. Fedorov, 181 Wn. App. 187 (Div. I, May 12, 2014) – July 14:18

Interrogation should have ended when Mirandized triple-murderer said "I don't want to talk about it," and officer's follow-up consoling words constituted further interrogation, but trial court error concluding otherwise was harmless in light of other overwhelming evidence. In re Personal Restraint of Dayva Cross, 180 Wn.2d 664 (June 26, 2014) – August 14:12

Custodial suspect's references to getting an attorney in a statement that he made shortly before receiving Miranda warnings was an unambiguous request for an attorney that precluded any attempt by officers to interrogate or to clarify the statement. Sessoms v. Grounds, ___ F.3d ___, 2014 WL 4668005 (9th Cir., Sept. 22, 2014) – November 14:04

INTIMIDATING A PUBLIC SERVANT (RCW 9A.76.180)

Candidate for judicial office is not a "public servant" for purposes of Intimidating a Public Servant statute. State v. Hendrickson, 177 Wn. App. 67 (Div. III, Oct. 1, 2013) – February 14:24

JUVENILE CODE (Title 13 RCW)

Chapter 13.50 RCW provides the exclusive means for obtaining juvenile records. Wright v. Department of Social and Health Services, 176 Wn. App. 585 (Div. II, Sept. 10, 2013) – January 14:23

Under chapter 13.50 RCW, records that are part of the official juvenile court file are subject to public inspection (unless sealed); records that are not part of the official court file are confidential. State v. A.G.S., 176 Wn. App. 365 (Div. II, Sept. 4, 2013) – January 14:25

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

Division Two of the Court of Appeals Divisions One and Two applies a categorical “incidental restraint doctrine,” finding insufficient evidence of First Degree Kidnapping in case where defendants were convicted of robbery. State v. Berg and State v. Reed, ___ Wn. App. ___, 310 P.3d 866 (Div. II, Oct. 8, 2013) – February 14:22

Insufficient evidence of first degree kidnapping where defendant held victim hostage in her home, without harming her, until he found a ride. State v. Garcia, ___ Wn.2d ___, 318 P.3d 266 (Feb. 13, 2014) – April 14:18

Custodial interference charge based on weekend retention upheld. State v. Cline, 180 Wn. App. 644 (Div. II, April 22, 2014) – July 14:23

Evidence held sufficient to meet first degree kidnapping statute’s element of “intent to cause extreme mental distress.” State v. Harrington, 181 Wn. App. 805 (Div. III, June 17, 2014) – September 14:21

LEGISLATIVE UPDATE

Note regarding separate, single stand-alone document on LED Internet page for 2014 Washington Legislative Update – May 14:03

LIMITATIONS PERIODS (RCW 9A.04.080)

Rape One limitations period does not start to run until DNA profile for sample extracted from victim’s clothing is matched with DNA profile of known suspect; also, constitutional Due Process protections were not violated here (1) in nearly 13-year delay in filing of charges or (2) in negligent destruction of evidence by police. State v. McConnell, 179 Wn. App. 592 (Div. I, Dec. 30, 2013) – April 14:23

LURING (RCW 9A.40.090)

Sufficient evidence to convict man of luring under RCW 9A.40.090 where he rode by on a child’s Superman BMX bicycle and said to 9-year-old: “Do you want some candy? I’ve got some at my house.” State v. Homan, 181 Wn.2d 102 (July 31, 2014) – October 14:12

MAKING FALSE OR MISLEADING STATEMENTS TO PUBLIC SERVANT (RCW 9A.76.175)

Sound Transit fare enforcement officers are not “public servants” for purposes of RCW 9A.76.175, which prohibits making false or misleading statements to a public servant. State v. K.L.B., 180 Wn.2d 735 (June 26, 2014) – August 14:20

MALICIOUS MISCHIEF (Chapter 9A.48 RCW)

Sufficient evidence to convict defendant of malicious mischief based on damage to the property of another where defendant maliciously damaged a home that he was purchasing on a real estate contract. State v. Wooten, 178 Wn.2d 890 (Oct. 31, 2013) – February 14:16

MEDAL OF HONOR AND PEACE OFFICERS' MEMORIAL CEREMONY

Washington Law Enforcement Medal of Honor & Peace Officers Memorial Ceremony is scheduled for Friday, May 2, 2014 in Olympia at 1:00 p.m. – April 14:03: May 14:03

MEDICAL FURLOUGHS FOR INMATES

The Department of Corrections possesses the sole authority to grant medical furloughs to inmates. In re Cage, 181 Wn. App. 588 (Div. III, June 3, 2014) – September 14:22

MEDICAL USE OF MARIJUANA/CANNABIS ACT (Chapter 69.51A RCW) (See also topic “Uniform Controlled Substances Act and Other Drug Laws”)

Court rejects action challenging validity of city zoning ordinance prohibiting medical marijuana “collective gardens.” Cannabis Action Coalition v. City of Kent, 180 Wn. App. 455 (Div. I, March 31, 2014) – June 14:14

As to manufacturing charge, possession of 15 provider-designation forms at one time does not preclude medical marijuana defense under State v. Shupe’s view of pre-2011 version of chapter 69.51 RCW; as to delivery charge, medical marijuana defense precluded where decoy patient’s fake authorization was on paper that was not tamper-resistant. State v Markwart, 182 Wn. App. 335 (Div. III, July 3, 2014) – October 14:24. Status: Review is pending in the Washington Supreme Court; oral argument is scheduled for February 26, 2015.

Defendant should have been allowed to try to establish for jury that she was a designated provider under the Medical Use of Cannabis Act; she was not required to prove with medical testimony that an alleged qualified patient actually has a qualifying medical condition. State v. Constantine, 182 Wn. App. 635 (Div. III, July 31, 2014) – October 14:14

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

Death penalty can be predicated on an Alford plea of guilty. In re Dayva Cross, 178 Wn.2d 519 (Sept. 26, 2013) – January 14:21

Prosecutor may consider facts of crime when determining whether to seek the death penalty. State v. Monfort, 179 Wn.2d 122 (Nov. 14, 2013) – February 14:15

Evidence held sufficient to convict driver as accomplice to first degree premeditated murder in deaths of four Lakewood police officers; also exigent circumstances justified warrantless entry into defendant’s hotel room. State v. Allen, 178 Wn. App. 893 (Div. II, Jan. 14, 2014) – June 14:17

Corpus delicti for manslaughter established by blood spatter evidence; but defendant should have been allowed to present evidence of her alleged PTSD and battered person syndrome. State v. Green, ___ Wn. App. ___, 328 P.3d 988 (Div. II, June 24, 2014) – September 14:19

OUTRAGEOUS GOVERNMENT CONDUCT

Medical marijuana provider's challenge to government investigative conduct as "outrageous" fails to meet near-impossible-to-meet standard. State v Markwart, 182 Wn. App. 335 (Div. III, July 3, 2014) – October 14:24. Status: Review is pending in the Washington Supreme Court; oral argument is scheduled for February 26, 2015.

POSSE COMITATUS ACT

Posse Comitatus Act-like restrictions precluded NCIS agent from investigating State of Washington civilian for distributing child pornography. United States v. Dreyer, ___F.3d ___, 2014 WL 4474295 (9th Cir., Sept.12, 2014) – November 14:03

POSSESSION OF DEPICTIONS OF A MINOR ENGAGED IN SEXUALLY EXPLICIT CONDUCT (Chapter 9.68A RCW)

Link between murder investigation and apparent victim's journals provided probable cause to search for journals, including in electronic form; also, 2010 amendment defeats defendant's argument that his secret photographing of unposed children did not support charge under chapter 9.68A RCW for possession of depictions of a minor engaged in sexually explicit conduct. State v. Powell, 181 Wn. App. 716 (Div. II, June 10, 2014) – August 14:22

PUBLIC RECORDS ACT (Chapter 42.56 RCW)

Washington's constitutional separation of powers creates a qualified gubernatorial communications privilege that functions as an exemption to the PRA. Freedom Foundation v. Gregoire, 178 Wn.2d 686 (Oct. 17, 2013) – January 14:20

Chapter 13.50 RCW provides the exclusive means for obtaining juvenile records. Wright v. Department of Social and Health Services, 176 Wn. App. 585 (Div. II, Sept. 10, 2013) – January 14:23

Under chapter 13.50 RCW, records that are part of the official juvenile court file are subject to public inspection (unless sealed); records that are not part of the official court file are confidential. State v. A.G.S., 176 Wn. App. 365 (Div. II, Sept. 4, 2013) – January 14:25 Status: Review is pending in the Washington Supreme Court.

Failure to provide brief explanation of how exemption applies to redaction (in this case of driver's licenses) entitles PRA requestor to costs and fees (but not penalties). City of Lakewood v. Koenig, 176 Wn. App. 397 (Div. II, Sept. 4, 2013) – January 14:25 Status: Review is pending in the Washington Supreme Court.

Categorical "essential to effective law enforcement" exemption (RCW 42.56.240(1)) ends once a criminal case is initially referred to the prosecutor; no categorical exemption exists for internal administrative investigations; witnesses' identities are not exempt under the facts of this case; and nonconviction data is exempt from disclosure under chapter 10.97 RCW. Sargent v. Seattle Police Department, 179 Wn.2d 376 (Dec. 19, 2013) – March 14:14

Anti-SLAPP statute is not impacted by city's declaratory judgment action under the PRA, RCW 42.56.540. Egan v. City of Seattle, 179 Wn. App. 333 (Div. I, Feb. 3, 2014) – May 14:21

Determination of bad faith under RCW 42.56.565(1) (prohibiting PRA penalties in cases brought by inmates absent bad faith) does not require intentional wrongful act. Francis v. Department of Corrections, 178 Wn. App. 42 (Div. II, Nov. 19, 2013 – May 14:25)

Where agency has agreed to disclose records but is prohibited from doing so by a court order, and that court order is later vacated by an appellate court, the requestor is not a “prevailing party” entitled to attorney fees and costs. Robbins, Geller, Rudman & Dowd LLP, Et Al., Respondents V. Vincent T. Gresham, 179 Wn. App. 711 (Div. II, March 4, 2014) – June 14:15

Records related to employee termination based on substantiated misconduct, are not exempt from disclosure under either personal information (RCW 42.56.230(3)) or investigative records (RCW 42.56.240(1)) exemption. Martin v. Riverside School District No. 416, 180 Wn. App. 28 (Div. III, Jan. 30, 2014, publication ordered March 18, 2014) – June 14:16

Regional drug task force is not a separate legal entity subject to PRA lawsuit. Worthington v. WestNET, 179 Wn. App. 788 (Div. II, Jan. 28, 2014, publication ordered March 11, 2014) – June 14:17

Administrative leave letter and two payroll spreadsheets, with employee (teacher) names redacted, are not exempt from disclosure under either personal information (RCW 42.56.230(3)) or investigative records (RCW 42.56.240(1)) exemption. Predisik v. Spokane Sch. Dist. No. 81, 179 Wn. App. 713 (Div. III, Jan. 23, 2014, publication ordered Feb. 27, 2014) – June 14:24

Privacy Act, chapter 9.73 RCW, exemption from disclosure for in-car videos applies only when there is pending litigation, not to circumstances where there might be litigation. Fisher Broadcasting-Seattle TV LLC dba KOMO 4 v. City of Seattle and Seattle Police Department, 180 Wn.2d 515 (June 12, 2014) – August 14:16

Bad faith for purposes of RCW 42.56.565(1), which prohibits penalty awards to inmates in PRA cases absent bad faith, requires a wanton or willful act or omission by public agency. Faulkner v. Department of Corrections, ___ Wn. App. ___, 2014 WL 4086310 (Div. III, Aug. 19, 2014) – October 14:19

Department of Licensing’s search for records was adequate and timely and its redactions were proper. West v. Department of Licensing, 182 Wn. App. 500 (Div. I, June 9, 2014, publication ordered Aug. 1, 2014) – October 14:23

Records subject to a protective order in civil litigation on grounds that production would be unduly burdensome are not exempt from disclosure under RCW 42.56.290, the “controversy” exception to the PRA. Washington State Department of Transportation v. De Sugiyama, ___ Wn. App. ___, 2014 WL 3734123 (Div. II, July 29, 2014) – October 14:24

Where government official primarily uses personal cell phone to conduct county business, any call logs and text messages pertaining to government business are “public records” and subject to public disclosure. Nissen v. Pierce County, ___ Wn. App. ___, 2014 WL 4435860 (Div. II, Sept. 9, 2014) – November 14:06

Based on detailed declarations, pre-printed information on a confidential information report qualifies as specific intelligence information, and non-disclosure is essential to

effective law enforcement. Haines-Marchel v. Department of Corrections, ___Wn. App. ___, 334 P.3d 99 (Div. II, September 16, 2014) – December 14:04

Because allegations against public employee were not “highly offensive,” the employee’s name should not been redacted from an “unsubstantiated” internal investigation. West v. Port of Olympia, ___Wn. App. ___, 333 P.3d 488 (Div. II, 2014) – December 14:05

“PUBLIC SERVANT” DEFINITION (RCW 9A.04.110 (23))

Sound Transit fare enforcement officers are not “public servants” for purposes of RCW 9A.76.175, making false or misleading statements to a public servant. State v. K.L.B., 180 Wn.2d 735 (June 26, 2014) – August 14:20

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

Custodial Sexual Misconduct statute (RCW 9A.44.160) is not unconstitutionally vague – an ordinary person would clearly understand that the statute applies to a corrections officer. State v. Clapper, 178 Wn. App. 220 (Div. II, Dec. 3, 2013) – April 14:25

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

Rendering criminal assistance evidence held sufficient because statements were affirmative lies, not mere false denials of knowledge. State v. Mollet, 181 Wn. App. 701 (Div. I, June 9, 2014) – August 14:24

SEARCHES (See also “Arrest, Stop and Frisk” topic)

Administrative searches

Suspicionless stop of vehicle on a highway to check for compliance with Fish and Game laws does not qualify as an administrative stop and search under the facts of this case; accordingly, stop violated the Fourth Amendment, and, because law was clearly established against such a stop, officers are not entitled to qualified immunity. Tarabochia v. Adkins, ___ F.3d ___, 2014 WL 4413235 (9th Cir., Sept. 9, 2014) – November 14:02

Consent exception to search warrant requirement

Supreme Court reverses conviction in split voting on issues of whether, under the facts of the case: (1) arrest warrant justified home entry where there was some doubt that subject of warrant resided at the home entered or was at home at the time of entry; (2) Ferrier warnings were or were not required to obtain voluntary consent to search the home for the wanted person; (3) whether officers unlawfully ignored withdrawal of consent; (4) “independent source” exception to exclusionary rule not applicable on facts of this case. State v. Ruem, 179 Wn.2d 185 (Nov. 27, 2013) – January 14:15

No Fourth Amendment search occurs where detectives do not view any additional images other than those viewed by computer store employee, regardless of fact that detectives requested the images be enlarged (Washington rule under article I, section 7 differs per State v. Eisfeldt, 163 Wn.2d 628 (2008) July 08 LED:09); wife had apparent authority to consent to search of home office and computer (Washington rule under

article I, section 7 differs per State v. Morse, 156 Wn.2d 1 (2005) Feb 06 LED:02). United States v. Tosti, 733 F.3d 816 (9th Cir., Oct. 1, 2013) – February 14:09

Under Fourth Amendment, after domestic violence suspect was lawfully arrested and removed from residence, his earlier objection to police entry was not barrier to police search based on new consent from co-resident victim. Fernandez v. California, ___ U.S. ___, 134 S. Ct. 1126 (Feb. 25, 2014) – April 14:03

Warrantless search of purse without suspect’s consent or applicability of other exception to warrant requirement unlawful where there was evidence she had possessory interest in the purse. State v. Hamilton, 179 Wn. App. 870 (Div. II, March 11, 2014) – July 14:24

Four rulings under Washington constitution: 1) frisk was justified by late hour, plus officer’s 1-on-1 contact on street with traffic violator, plus officer’s knowledge that detainee had falsely denied possessing a weapon in a contact a week before when the detainee in fact was discovered in earlier contact to have Derringer-style gun in his pocket; 2) fruit of poisonous tree doctrine is not applicable to frisks; 3) officer-safety considerations did not support search of six-by-four-by-one-to-two-inch lightweight, hard, opaque box lawfully taken from detainee’s pocket; 4) consent to search box was not established to be voluntary. State v. Russell, 180 Wn.2d 860 (July 10, 2014) – September 14:07

Law enforcement officers are not required to give the three Ferrier “knock and talk” consent warnings (right to refuse, restrict scope and retract) when the officers’ manifested intent is to ask a resident for consent to look for an arrest warrant subject the officers believe is present in the residence. State v. Westvang, ___ Wn. App. ___, 2014 WL ___ (Div. II, Oct. 14, 2014) – December 14:06

Deliberate or reckless omissions or false statements in search warrant affidavit

Probable cause for issuance of search warrant would remain even if affidavit were supplemented with information omitted by police relating to witness’s credibility. United States v. Ruiz, 758 F.3d 1144 (9th Cir., July 11, 2014) – September 14:05

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

“Rectum-packing” plaintiff/arrestee’s allegations that officers lied to doctor to get doctor to do a non-consenting, non-emergent warrantless extraction of a baggie of drugs from his rectum must go to trial. George v. Edholm, 752 F.3d 1206 (9th Cir., May 28, 2014) – August 14:10

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

Supreme Court reverses conviction in split voting on issues of whether, under the facts of the case: (1) arrest warrant justified home entry where there was some doubt that subject of warrant resided at the home entered or was at home at the time of entry; (2) Ferrier warnings were or were not required to obtain voluntary consent to search the home for the wanted person; (3) whether officers unlawfully ignored withdrawal of

consent; (4) “independent source” exception to exclusionary rule not applicable on facts of this case. State v. Ruem, 179 Wn.2d 195 (Nov. 27, 2013) – January 14:15

Payton rule barring forced entry of a residence to arrest a suspect where there is neither an arrest warrant nor exigent circumstances also bars ordering the person out of his home; Ninth Circuit rules that officers violated the rule. United States v. Nora, 765 F.3d 1049 (9th Cir., Aug. 28, 2014) – October 14:04

Exclusionary rules of federal and State constitutions

Supreme Court reverses conviction in split voting on issues of whether, under the facts of the case: (1) arrest warrant justified home entry where there was some doubt that subject of warrant resided at the home entered or was at home at the time of entry; (2) Ferrier warnings were or were not required to obtain voluntary consent to search the home for the wanted person; (3) whether officers unlawfully ignored withdrawal of consent; (4) “independent source” exception to exclusionary rule not applicable on facts of this case. State v. Ruem, 179 Wn.2d 195 (Nov. 27, 2013) – January 14:15

Investigatory post-arrest car search in 2008 that was made unlawful by change to car-search-incident doctrine that culminated with State v. Snapp cannot be salvaged on facts of case by “inventory search” rationale or “independent source” exception to exclusionary rule. State v. Green, 177 Wn. App. 332 (Div. I, Oct. 28, 2013) – February 14:16

Four rulings under Washington constitution: 1) frisk was justified by late hour, plus officer’s 1-on-1 contact on street with traffic violator, plus officer’s knowledge that detainee had falsely denied possessing a weapon in a contact a week before when the detainee in fact was discovered in earlier contact to have Derringer-style gun in his pocket; 2) fruit of poisonous tree doctrine is not applicable to frisks; 3) officer-safety considerations did not support search of six-by-four-by-one-to-two-inch lightweight, hard, opaque box lawfully taken from detainee’s pocket; 4) consent to search box was not established to be voluntary. State v. Russell, 180 Wn.2d 860 (July 10, 2014) – September 14:07

Execution of search warrant, including frisking or searching persons present

Execution of search warrant was not flawed because warrant need not be shown to defendant prior to start of search. State v. Ollivier, 178 Wn.2d 813 (Oct. 31, 2013) – January 14:11

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

Qualified immunity granted to officer where unanimous United States Supreme Court holds that Fourth Amendment case law does not clearly establish prohibition on warrantless entry into curtilage (high-fence-and-gate-enclosed front yard) in hot pursuit of misdemeanor whose offense was disobeying an order to stop. Stanton v. Sims, ___ U.S. ___, 134 S. Ct. 3 (Nov. 4, 2013) – January 14:03

Evidence held sufficient to convict driver as accomplice to first degree premeditated murder in deaths of four Lakewood police officers; also exigent circumstances justified

warrantless entry into defendant's hotel room. State v. Allen, 178 Wn. App. 893 (Div. II, Jan. 14, 2014) – June 14:17

Impound/inventory exception to search warrant requirement

Investigatory post-arrest car search in 2008 that was made unlawful by change to car-search-incident doctrine that culminated with State v. Snapp cannot be salvaged on facts of case by “inventory search” rationale or “independent source” exception to exclusionary rule. State v. Green, 177 Wn. App. 332 (Div. I, Oct. 28, 2013) – February 14:16

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

United States Supreme Court to address Fourth Amendment questions related to warrantless cell phone searches conducted by police incident to arrest. – March 14:03

Supreme Court relies on Byrd decision to hold that immediately after officers arrested and handcuffed suspect in a parking lot, a bright line, time-of-arrest rule authorized the officers, incident to arrest, to search bags that were taken from his actual possession at arrest. State v. MacDicken, 179 Wn.2d 936 (Feb. 27, 2014) – April 14:10

Cell phone seized from person during arrest generally is not subject to search incident to arrest under the Fourth Amendment; cell phones are entitled to greater privacy protection than other personal items seized during arrest. Riley v. California, ___U.S. ___, 134 S. Ct. 2473 (June 25, 2014) (consolidated case); United States v. Wurie, ___U.S. ___, 134 S. Ct. 2473 (June 25, 2014) (consolidated case) – August 14:04

Where officer separated defendant from his backpack nearly ten minutes prior to placing him under arrest, and the officer subsequently searched the backpack for evidence, Court of Appeals rules under “time of arrest” rule, 2-1, that search was not valid as a warrantless search incident to arrest. State v. Brock, 182 Wn. App. 680 (Div. I, Aug. 4, 2014) – October 14:22

Overbreadth and particularity issues for search warrants

Failure by defendant's attorney to challenge overbreadth of search warrant at trial not prejudicial; even though the search warrant was clearly overbroad, the error in issuance of the warrant did not require suppression of evidence under the circumstances of this case. State v. Higgs, 177 Wn. App. 414 (Div. II, Oct. 29, 2013), review denied, 179 Wn.2d 1024 (March 5, 2014) – February 14:20

Plain view doctrine

Government wins in child pornography case on issues of (1) probable cause/staleness and (2) CDT III search warrant protocols related to the plain view doctrine. United States v. Schesso, 730 F.3d 1040 (9th Cir., Sept. 18, 2013) – February 14:02

Privacy expectations, scope of constitutional protections (see also “Open View” subtopic under this “Searches” topic)

Civil Rights Act facial constitutional challenge to city ordinance: Split court declares to be unconstitutional a City of Los Angeles ordinance making it a misdemeanor for a

hotel/motel operator to deny police random access to guest register information; ordinance held to violate Fourth Amendment rights of hotel/motel operators. Patel v. City of Los Angeles, 738 F.3d 1058 (9th Cir., Dec. 24, 2013) – April 14:09 Status: On October 20, 2014, the United States Supreme Court granted the request of the City of Los Angeles for review; oral argument has not yet been scheduled.

Detective's opening, reading, and responding to incoming text message (posing as the recipient) from the defendant violated the defendant's (sender of text messages) right to privacy under article I, section 7 of the Washington state constitution. State v. Hinton, 179 Wn.2d 862 (Feb. 27, 2014) – May 14:08

Private search doctrine

No Fourth Amendment search occurs where detectives do not view any additional images other than those viewed by computer store employee, regardless of fact that detectives requested the images be enlarged (Washington rule under article I, section 7 differs per State v. Eisfeldt, 163 Wn.2d 628 (2008) July 08 LED:09); wife had apparent authority to consent to search of home office and computer (Washington rule under article I, section 7 differs per State v. Morse, 156 Wn.2d 1 (2005) Feb 06 LED:02). United States v. Tosti, 733 F.3d 816 (9th Cir., Oct. 1, 2013) – February 14:09

Probable cause to search, including staleness

After detective's deliberately false statements are deleted, affidavit still establishes probable cause for warrant to search computer for child pornography – informant had strong motive to provide truthful information about what he saw housemate viewing on computer. State v. Ollivier, 178 Wn.2d 813 (Oct. 31, 2013) – January 14:11

Government wins in child pornography case on issues of (1) probable cause/staleness and (2) CDT III search warrant protocols related to plain view doctrine. United States v. Schesso, 730 F.3d 1040 (9th Cir., Sept. 18, 2013) – February 14:02

Affidavit shows probable cause to search for marijuana grow operation even though it does not address whether suspect has permit to grow medical marijuana. State v. Ellis, 178 Wn. App. 801 (Div. III, Jan. 9, 2014) review denied, ___Wn.2d ___ (2014) – May 14:22

Division One agrees with Division Three that affidavit shows probable cause to search for marijuana grow operation even though it does not address whether suspect has permit to grow medical marijuana. State v. Reis, 180 Wn. App. 438 (Div. I, March 31, 2014) – May 14:23 Status: Review is pending in the Washington Supreme Court; oral argument is set for February 10, 2015.

Link between murder investigation and apparent victim's journals provided probable cause to search for journals, including in electronic form; also, 2010 amendment defeats defendant's argument that his secret photographing of un-posed children did not support charge under chapter 9.68A RCW for possession of depictions of a minor engaged in sexually explicit conduct. State v. Powell, 181 Wn. App. 716 (Div. II, June 10, 2014) – August 14:22

Probable cause for issuance of search warrant would remain even if affidavit were supplemented with information omitted by police relating to witness's credibility. United States v. Ruiz, 758 F.3d 1144 (9th Cir., July 11, 2014) – September 14:05

Extensive testimony regarding training and certification as well as testimony regarding canine's 100 percent reliability rating in the field is held sufficient to admit evidence of positive canine alert under Florida v. Harris. United States v. Gadson, ___ F.3d ___, 2014 WL 4067203 (9th Cir., Aug. 19, 2014) – October 14:05

Probable cause nexus between (a) greenhouses where marijuana grow was seen in overflight and (b) home and shed on rural property parcel held established in affidavit for search warrant. State v. Constantine, 182 Wn. App. 635 (Div. III, July 31, 2014) – October 14:14; State v. Davis, 182 Wn. App. 625 (Div. III, July 31, 2014) – October 14:18

Based on State v. Ellis, Court of Appeals holds that probable cause to search for marijuana grow operation can be established in case under pre-2011 version of Medical Use of Cannabis Act without addressing whether suspect is authorized under MUCA to grow medical marijuana. State v. Davis, 182 Wn. App. 625 (Div. III, July 31, 2014) – October 14:18

Scope of search under a search warrant

Search warrant to extract blood sample held not to authorize testing of blood sample. State v. Martines, 182 Wn. App. 519 (Div. I, July 21, 2014) – September 14:15 Status: On December 2, 2014, the Washington Supreme Court granted review; oral argument has not yet been scheduled.

Strip and body cavity searches

Warrantless body cavity search of arrestee violates Fourth Amendment. United States v. Fowlkes, ___ F.3d ___, 2014 WL 4178298 (9th Cir., Aug. 25, 2014) – November 14:02

SECOND AMENDMENT AND RELATED STATE CONSTITUTIONAL PROTECTION

Statute prohibiting possession of firearm by person released on bond after committing a serious offense is not unconstitutional under article I, section 24 of the Washington State constitution or the Second Amendment of the United States constitution. State v. Jorgenson, 179 Wn.2d 145 (Nov. 21, 2013) – February 14:14

Ninth Circuit rejects Second Amendment challenge to federal firearms statute that prohibits the possession of a firearm by persons convicted of a domestic violence misdemeanor. United States v. Chovan, 735 F.3d 1127 (9th Cir., Nov. 18, 2013) – March 14:09

Second Amendment right to bear arms dooms San Diego County Sheriff's Office policy that prevents most law-abiding, psychiatrically-responsible adults from lawfully carrying a handgun in public. Peruta v. San Diego County, 742 F.3d 1144 (9th Cir., Feb. 13, 2014) – May 14:07

Ninth Circuit panel upholds firearms storage and ammunition sales ordinances against Second Amendment challenge. Jackson v. City and County of San Francisco, 746 F.3d 953 (9th Cir., March 25, 2014) – July 14:11

Former felon whose rights were automatically restored under Montana state statute, but who, as a former felon, could not carry a concealed weapon under Montana law, was properly prohibited from possessing a firearm under federal law, and such prohibition does not violate the Second Amendment. Van Der Hule v. Holder, 759 F.3d 1043 (9th Cir., July 16, 2014) – September 14:04

City ordinance that prohibits carrying “dangerous” knife does not violate right to bear arms under article I, section 24 of Washington constitution or Second Amendment to federal constitution. City of Seattle v. Evans, 182 Wn. App. 188 (Div. I, June 30, 2014) – September 14:17 **Status:** On December 2, 2014, the Washington State Supreme Court granted review; oral argument has not yet been scheduled.

SENTENCING

Trial court had statutory authority to impose a condition of probation that prohibited defendant, who was convicted of cruelty to animals, from owning or living with animals during the probationary term. State v. Deskins, 180 Wn.2d 68 (March 27, 2014) – June 14:13

SEXUAL EXPLOITATION OF CHILDREN (RCW 9.68A RCW and federal statutes)

Federal Sexual Exploitation statute does not require defendant's knowledge that materials used to produce child pornography traveled in interstate commerce; court also finds sufficient evidence to convict defendant of sexual exploitation of a child. United States v. Sheldon, 730 F.3d 1128 (9th Cir., Sept. 19, 2013) – January 14:08

Photographs constitute child pornography where they are depictions of children that have been “morphed,” or digitally altered, to appear as though the children are engaged in sexual activity. Shoemaker v. Taylor, 730 F.3d 778 (9th Cir. Sept. 13, 2013) – February 14:10

SIXTH AMENDMENT RIGHT TO CONFRONTATION

Washington Supreme Court announces two-step test for determining whether expert witness testimony is subject to confrontation clause: first, the person must be a “witness” by virtue of making a statement of fact to the tribunal; and second, the person must be a witness “against” the defendant by making a statement that tends to inculcate the accused. State v. Luj, ___ Wn.2d ___, 315 P.3d 493 (Jan. 2, 2014) – March 14:20

Sixth Amendment confrontation clause violated in allowing proof of school bus stop location through aerial map without presenting school district official. State v. Pearson, ___ Wn. App. ___, 321 P.3d 1285 (Div. III, April 10, 2014) – July 14:23

Where defendant was the cause of witness’s absence at trial, he forfeited his Sixth Amendment right to confront the witness, and he also automatically waived any hearsay objection regarding the statements of the missing witness. State v. Dobbs, 180 Wn.2d 1 (March 13, 2014) – August 14:21

Defendant’s Sixth Amendment right to confrontation violated where child whose hearsay was admitted into evidence was not questioned directly about allegations and hearsay statement. State v. Kinzle, 181 Wn. App. 774 (Div. I, June 16, 2014) – September 14:22

Detective’s testimony regarding a conversation between the defendant and an informant, where the detective was present with the informant and heard only the words of the informant, is inadmissible hearsay; Sixth Amendment right to confrontation also implicated. State v. Hudlow, ___ Wn. App. ___, 331 P.3d 90 (Div. III, May 13, 2014, motion to publish granted July 15, 2014) – September 14:23

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. Lynch, 178 Wn.2d 487 (Sept. 19, 2013) – January 14:22

SIXTH AMENDMENT RIGHT TO JURY TRIAL

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, 178 Wn.2d 541 (Sept. 26, 2013) – January 14:22

Arresting officer’s testimony based on a Horizontal Gaze Nystagmus (HGN) test, that there was “no doubt” defendant was impaired, amounted to an opinion on guilt. State v. Quaaale, 177 Wn. App. 603 (Div. III, Nov. 7, 2013) – March 14:24 Status: On December 18, 2014, the Washington Supreme Court affirmed the Court of Appeals decision.

SPECIAL INQUIRY JUDGE

Special inquiry judge subpoena can satisfy article 1, section 7 of the Washington constitution even though the standard for issuing the subpoena is less than probable cause. State v. Reeder, 181 Wn. App. 897 (Div. I, June 23, 2014) – September 14:19. Status: Review is pending in the Washington Supreme Court; oral argument is scheduled for February 24, 2015.

THEFT AND RELATED CRIMES (Chapter 9A.56 RCW)

Ordinary pair of pliers used by shoplifter to remove a security tag was not a “device designed to overcome security systems” under former RCW 9A.56.360(1)(b). State v. Reeves, ___ Wn. App. ___, 2014 WL 5358320 (Div. II, October 21, 2014) – December 14:06

Evidence on State’s constructive possession theory held to be sufficient to support convictions for unlawful firearm possession and possessing stolen firearm crimes in two cases, insufficient to support possessing stolen firearm and unlawful firearm possession convictions in another case, in prosecutions of Maurice Clemmons’ accomplices. State v. Davis, Davis, and Nelson, 176 Wn. App. 849 (Div. II, Sept. 20, 2013) – June 14:20 Status: On December 24, 2014, the Washington Supreme Court reversed the Court of Appeals on the the lower court’s rulings that affirmed the possession-based convictions, ruling that there was insufficient evidence of either constructive or actual possession.

TRAFFIC (Title 46 RCW) (See also “Implied Consent” topic)

Suspension of license and subsequent conviction for driving while license suspended are appropriate where defendant appeared and contested notice of infraction but failed to

pay penalty when trial court rejected his challenge; in failing to pay fine defendant failed to comply with terms of notice of infraction. State v. Johnson, ___ Wn.2d ___, 315 P.3d 1090 (Jan. 9, 2014) – April 14:22

Notice that statewide Infraction and Criminal Citation forms have been modified. Notice – August 14:03

TRAFFICKING IN STOLEN PROPERTY (Chapter 9A.82 RCW)

Insufficient facts to support charge of trafficking in stolen property under chapter 9A.82 RCW where defendant took unpurchased merchandise from store shelf to the customer service counter to “return” the items for store credit. State v. Graham, 182 Wn. App. 180 (Div. III. June 26, 2014) – September 14:17

UNIFORM CONTROLLED SUBSTANCES ACT AND OTHER DRUG LAWS (Chapter 69.50 RCW) (See also “Forfeiture Law”, “Medical Use of Marijuana/Cannabis Act”)

Two holdings: (1) failure by defendant’s attorney to challenge overbreadth of search warrant at trial not prejudicial; (2) evidence of methamphetamine residue found in search supports possession conviction. State v. Higgs, 177 Wn. App. 414 (Div. III, Oct. 29, 2013), review denied, 179 Wn.2d 1024 (March 5, 2014) – February 14:20

Attorney General Opinion 2014 No. 2: Washington Attorney General opines that Initiative 502 establishing system for licensing marijuana producers, processors, and retailers does not preempt local ordinances. – March 14:03

WASHINGTON LAW AGAINST DISCRIMINATION (Chapter 49.60 RCW)

The Washington Law Against Discrimination (WLAD), chapter 49.60 RCW, creates a cause of action for failure to reasonably accommodate employee religious practices. Kumar v. Gate Gourmet, 180 Wn.2d 481 (May 22, 2014) – August 14:21