Law Enforcement Digest

DECEMBER 2010

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

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UNITED STATES SUPREME COURT GRANTS REVIEW IN GREENE V. CAMRETA

On October 12, 2010, the U.S. Supreme Court granted review of the Ninth Circuit decision in Greene v. Camreta, 588 F.3d 1011 (9th Cir. 2009) (decision filed December 10, 2009) **Feb 10 LED:05**. Greene involves a Civil Rights Act lawsuit in which the Ninth Circuit held that an unlawful Fourth Amendment "seizure" occurred when a caseworker and a law enforcement officer interviewed a possible child sex abuse victim at an elementary school without parental consent, court order, or exigent circumstances. A U.S. Supreme Court decision is expected in the case in 2011.

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2010 LED SUBJECT MATTER INDEX

2010 LED SUBJECT MATTER INDEX – LED EDITORIAL NOTE: Our annual LED subject matter index covers all LED entries from January 2010 through and including this December 2010 LED. Since 1988, we have published an annual index each December. Also, since establishing the LED as a monthly publication in 1979, we have published several multi-year subject matter indexes: 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, and 2004-2008 indexes, as well as monthly issues of the LED starting with January of 1992, are available on the "Law Enforcement Digest" internet page of the Criminal Justice Training Commission (CJTC) – go to CJTC Home Page at: https://fortress.wa.gov/cjtc/www/ and click on "Law Enforcement Digest."

ACCOMPLICE LIABILITY (RCW 9A.08.020)

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

ARREST, STOP AND FRISK

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 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

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. The Washington Supreme Court has granted discretionary review in Wright. – November 10:03

In-person report by unknown, unidentified UPS driver held to be reliable in support of reasonable suspicion for a Terry stop. U.S. v. Palos-Marquez, 591 F.3d 1272 (9th Cir. 2010) (decision filed 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. U.S. v. Burkett, 612 F.3d 1103 (9th Cir. 2010) (decision filed 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, ___ Wn.2d ___, 239 P.3d 573 (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, ___ Wn. App. ___, 239 P.3d 1160 (Div. II, 2010) – November 10:14

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

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

BAIL JUMPING (RCW 9A.76.170)

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

CIVIL LIABILITY

Civil Rights Act lawsuit: 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. 2009) (decision filed November 10, 2009) – January 10:02

Civil Rights Act lawsuit for alleged "excessive force": 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. 2009) (decision filed December 28, 2009) – February 10:02. NOTE: See the entry below in this section regarding the Ninth Circuit's revised decision on qualified immunity in Bryan.

Civil Rights Act lawsuit: 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. 2009) (decision filed December 10, 2009) – February 10:05 NOTE: The U.S. Supreme Court has granted review in this case; see note above on page 1 of this LED.

Taser use held reasonable on the totality of the circumstances. Mattos v. Agarano, 590 F.3d 1082 (9th Cir. 2010) (decision filed January 12, 2010) – March 10:05. NOTE: The Ninth Circuit has granted the plaintiff's motion for rehearing before a larger panel of judges. – November 10:04

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

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, 130 S.Ct. 1175 (2010) (decision filed February 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. 2010) (decision filed March 26, 2010) – June 10:10. NOTE: The Ninth Circuit has granted the plaintiff's motion for rehearing before a larger panel of judges. – November 10:04

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

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. 1218) (decision filed December 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. 2010) (decision filed July 6, 2010) – September 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. 2010) (decision filed 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. 2010) (decision filed June 18, 2010) – September 10:07

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. 2010) (decision filed August 24, 2010) – October 10:03

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. 2010) (decision filed June 18, 2010) – October 10:06

Civil Rights Act civil liability: 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, ___ F.3d ___, 2010 WL 3504502 (9th Cir. 2010) (decision filed September 9, 2010) – November 10:03

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

CJTC INTERNET LED PAGE

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

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

CORPUS DELICTI RULE

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

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

CRUEL AND UNUSUAL PUNISHMENT (EIGHTH AMENDMENT)

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

DISCOVERY UNDER CRIMINAL PROCEDURE COURT RULES

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 defendant have the right to take and freely review mirror images of his computer's hard drive. State v. Grenning, 169 Wn.2d 47 (2010) – September 10:15

DOMESTIC VIOLENCE PROTECTION ACT (Chapter 26.50 RCW)

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

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

ELECTRONIC SURVEILLANCE (Chapter 9.73 RCW)

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

EVIDENCE LAW

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, ___ Wn.2d ___, 239 P.3d 568 (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

EXCESSIVE FORCE (See "Civil Liability")

EXCLUSIONARY RULE (See subtopic under "Searches")

FICTITIOUS IDENTIFICATION POSSESSION (See "Forgery, Fraud and similar and related crimes")

FIREARMS LAWS **(Chapter 9.41 RCW AND OTHER WEAPONS LAWS)**

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 U.S. Constitution applies to limit state and local firearms laws. McDonald v. City of Chicago, 130 S.Ct. 3020 (2010) (decision filed 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

Rusty firearm was proved to be "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

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

FORFEITURE **(See also Uniform Controlled Substances Act topic)**

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, ___ Wn.2d ___, 238 P.3d 1168 (2010) – November 10:12

FORGERY, 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

FREEDOM OF SPEECH

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

GAMBLING **(Chapter 9.46 RCW)**

"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

HARASSMENT **(RCW 9A.46.020)**

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 raised theory in trial court. State v. Cross, 156 Wn. App. 568 (Div. II, 2010) – September 10:16

HEALTH INFORMATION PRIVACY

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

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

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

INDIANS (NATIVE AMERICANS) AND LAW ENFORCEMENT

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

Note: **2009 opinion in Eriksen addressing pursuit by tribal officers off the reservation is withdrawn; reconsideration is pending** – September 10:15

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, ___ Wn.2d ___, ___ P.3d ___, 2010 WL 4008887 (2010) – December 10:16

INTERROGATIONS AND CONFESSIONS (See also "Sixth Amendment Right to Counsel")

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, 130 S.Ct. 1213 (2010) (decision filed February 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, 130 S.Ct. 1195 (2010) (decision filed February 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, 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. 2010) (decision filed 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. 2010) (decision filed August 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, ___ Wn. App. ___, 238 P.3d 1240 (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. State v. Brown, State v. Duke, ___ Wn. App. ___, ___ P.3d ___, 2010 WL 3959631 (Div. III, 2010) – December 10:18

INTIMIDATION OF A PUBLIC SERVANT (RCW 9A.76.180)

Evidence of intent-to-influence-official-action element of RCW 9A.76.180 held insufficient to support charge. State v. Montano, ___ Wn.2d ___, 239 P.3d 360 (2010) – November 10:09

LEGISLATIVE UPDATE FOR 2010

Part One Of The 2010 Washington Legislative Update – May 10:02

Part Two Of The 2010 Washington Legislative Update – June 10:02

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 publically 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

LINEUPS, PHOTO IDENTIFICATIONS AND SHOWUPS

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

MUTUAL AID PEACE OFFICER POWERS ACT **(Chapter 10.93 RCW)**

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

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

PUBLIC RECORDS ACT **(Chapter 42.56 RCW)**

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

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

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

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

RES JUDICATA AND COLLATERAL ESTOPPEL

Acquittal in criminal prosecution under beyond-a-reasonable-doubt standard did not preclude probation revocation that was based on same conduct but was determined under a lower proof standard. City of Aberdeen v. Regan, ___ Wn.2d ___, 239 P.3d 1102 (2010) – November 10:13

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

Attorney-client privileged papers

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

Community caretaking, emergency and exigent circumstances exceptions to warrant requirement

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, 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

Consent exception to search warrant requirement

Civil Rights Act civil liability: 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, ___ F.3d ___, 2010 WL 3504502 (9th Cir. 2010) (decision filed September 9, 2010) – November 10:03

Exclusionary rule

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 reported on in the June 2010 LED at 24)

Vehicle search incident to arrest held unlawful – court is not clear as to whether it equates U.S. 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

Exigent circumstances

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

Incident to arrest (motor vehicle) exception to warrant requirement

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 has granted discretionary review in Snapp. – November 10:03

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). U.S. v. Ruckes, 586 F.3d 713 (9th Cir. 2009) (decision filed November 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 has granted discretionary review in Wright. – November 10:03

Vehicle search incident to arrest held unlawful – court is not clear as to whether it equates U.S. 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, ___ Wn. App. ___, 239 P.3d 1168 (Div. II, 2010).– November 10:14

Incident to arrest (non-motor vehicle) exception to 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

Medical Use of Marijuana Act

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")

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

Overbreadth and particularity

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. 1218) (decision filed December 9, 2009) – August 10:08

Privacy expectations, scope of constitutional protections (see also "Open view")

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. U.S. 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, 130 S.Ct. 2619 (2010) (Decision filed June 17, 2010) – August 10:02

Probable cause to search

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. U.S. v. Jennen, 596 F.3d 594 (9th Cir. 2010) (decision filed February 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. U.S. v. Franklin, 603 F.3d 652 (9th Cir. 2010) (decision filed 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. 2010) (decision filed August 24, 2010) – October 10:03

Probationer, parolee searches

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

School search exception to search warrant requirement

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, ___ Wn. App. ___, ___ P.3d ___, 2010 WL 3959631 (Div. III, 2010) – December 10:18

Scope of search under search warrant

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 premises while seeking search warrant

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

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. U.S. v. Jennen, 596 F.3d 594 (9th Cir. 2010) (decision filed February 24, 2010) – April 10:08

Waiver of 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 raised theory in trial court. State v. Cross, 156 Wn. App. 568 (Div. II, 2010) – September 10:16

SEX OFFENDER REGISTRATION

2006 federal sex offender registration law regulating interstate sex offender movement does not apply to moves made before effective date. Carr v. U.S., 130 S.Ct. 2229 (2010) – July 10:07

SIXTH AMENDMENT RIGHT TO CONFRONTATION

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

STALKING **(RCW 9A.46.110)**

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

TAMPERING WITH A WITNESS **(RCW 9A.72.120)**

TRAFFIC **(Title 46 RCW)** (See also "Implied consent")

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

UNIFORM CONTROLLED SUBSTANCES ACT **(CHAPTER 69.50 RCW AND OTHER DRUG LAWS)**

Trading drugs for firearms constitutes possessing the firearms "in furtherance of" the drug trafficking offense. U.S. v. Mahan, 586 F.3d 1185 (9th Cir. 2009) (decision filed November 16, 2009) – January 10:04

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