

December , 1992

HONOR ROLL

393rd Session, Basic Law Enforcement Academy -

President:

Best Overall: Officer

Best Academic: Officer

Best Firearms: Officer

Best Mock Scenes: Officer

Corrections Officer Academy - Class 172 - September 14 thru October 9, 1992

Highest Overall: Officer Mary F. Bledsoe - Cowlitz County Jail

Highest Written: Officer Donald C. Wagonblast - WA State Reformatory

Highest Practical Test: Officer Mary F. Bledsoe - Cowlitz County Jail

Highest in Mock Scenes: Officer Donald C. Wagonblast - WA State Reformatory

Highest Defensive Tactics: Officer Gina K. Braaten - WA State Reformatory

Corrections Officer Academy - Class 173 - September 21 thru October 16, 1992

Highest Overall: Officer Dorothy M. Holdren - WA Corrections Center for Women

Highest Written: Officer Dorothy M. Holdren - WA Corrections Center for Women

Officer Danny M. Francis - WA Corrections Center for Women

Highest Practical Test: Officer Leon Johnson, Jr. - WA Corrections Center for Women

Highest in Mock Scenes: Officer Judith D. Dedman - WA Corrections Center for Women

Highest Defensive Tactics: Officer Rick R. Espino - WA Corrections Center for Women

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1992 SUBJECT MATTER INDEX

LED EDITOR'S NOTE: This is our eleventh periodic LED subject-matter index since 1979. It covers LED's from January 1991 through December 1991. It includes all entries in the LED in 1992 except unpublished opinions of the Court of Appeals noted in the LED. See the December 1990 and December 1989 LED's for information about the location of prior periodic subject-matter and case name indexes, which generally have appeared in December, as well as information regarding 10-year cumulative subject-matter and 10-year case name indexes published in 1989 covering the period from January 1979 through December 1988. We anticipate publishing another cumulative subject-matter index in December of 1993, at which time we expect to publish a 15-year cumulative index with limited distribution due to the anticipated size of that index.

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Statute of limitations for excessive force, false arrest civil actions is two years. Boyles v. City of Kennewick, 62 Wn. App. 174 (Div. III, 1991) Feb. '92:20

Public duty doctrine does not give parole officers absolute immunity for negligent supervision of parolees - only qualified immunity applies. Taggart v. State, 118 Wn.2d 195 (1992) March '92:05

Unlawful force by corrections officer may trigger civil rights suit for Eighth Amendment violation even if injury to prisoner is not "significant". Hudson v. McMillian, 60 LW 4151 (1992) May '92:03

Immunity provision of domestic violence act doesn't protect police from suit for "failure to

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State's failure to preserve evidence, court's admission of human-tracker's testimony, do not taint murder conviction; premeditation proven. State v. Ortiz, 119 Wn.2d 294 (1992) Sept. '92:06

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"Substantial step" evidence supports attempted rape conviction. State v. Jackson, 62 Wn. App. 53 (Div. I, 1991) Feb. '92:15

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House guest could not consent to police entry to arrest resident. State v. Ryland, 65 Wn. App. 806 (Div. I, 1992) Oct. '92:10

Warrantless arrest on porch held to be violation of Payton rule. State v. Solberg 66 Wn. app. 66 (Div. I, 1992) Nov. '92:10

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Search warrant for controlled substances may be executed in 10 days. State v. Thomas, 65 Wn. App. 347 (Div. I, 1992) Oct. '92:16

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Paramedic's search lawful; statement to responding officer volunteered. State v. McWatters, 63 Wn. App. 911 (Div. III, 1992)

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Informant credibility established but defense claim that warrant affiant made false statements requires that record be made of in camera hearing. State v. Selander, 65 Wn. App. 134 (Div. II, 1992) Nov. '92:17

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Informant credibility established but defense claim that warrant affiant made false statements requires that record be made of in camera hearing. State v. Selander, 65 Wn. App. 134 (Div. II, 1992) Nov. '92:17

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Warrantless arrest on porch held to be violation of Payton rule. State v. Solberg, 66 Wn. App. 66 (Div. I, 1992) Nov. '92:10

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No standing to challenge search of vehicle where defendant had denied any connection to vehicle at the time of arrest. State v. Foulkes, 63 Wn. App. 643 (Div. I, 1991) Sept. '92:19

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Warrantless search of vehicle permitted incident to arrest of passenger. State v. Cass, 62 Wn. app. 793 (Div. II, 1991) Nov. '92:06

Custodial arrest lawful per se for traffic offenses listed in RCW 10.31.100(3). State v. Reding, 119 Wn.2d 685 (1992) Dec. '92:___

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Confrontation clause challenge fails - established hearsay exceptions support admission of child hearsay even though no showing by state of "unavailability" of the child witness to testify. White v.

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No standing to challenge search of vehicle where defendant had denied any connection to vehicle at the time of arrest. State v. Foulkes, 63 Wn. App. 643 (Div. I, 1991) Sept. '92:19

Automatic standing doctrine in limbo. State v. Zakel, 119 Wn.2d 563 (1992) Nov. '92:06

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Tacoma's drug loitering law withstands constitutional challenge. Tacoma v. Luvane, 118 Wn.2d 826 (1992) Aug. '92:09

Defendant not entitled to entrapment instruction; evidence sufficient to support VUCSA conviction on theory that he was accomplice to drug deal. State v. Galisia, Norgard, 63 Wn. app. 833 (Div. I, 1992) Sept. '92:14

Search warrant for controlled substances may be executed in 10 days. State v. Thomas, 65 Wn. app. 347 (Div. I, 1992) Oct. '92:16

WASHINGTON STATE SUPREME COURT

DELAYED SEARCH OF FANNY PACK DETACHED DURING ARREST WAS "INCIDENT TO ARREST"

State v. Clayton Donald Smith, 119 Wn.2d 675 (1992)

Facts and Proceedings: (Excerpted from Supreme Court opinion)

On March 30, 1990, Yakima police officer Elaine Gonzales was patrolling in a marked police car. Gonzales spotted a large group of juveniles in a parking lot near an elementary school. As she approached this group, she noticed bottles of wine coolers and beer on the ground. Smith moved away from the group and began running when Gonzales got out of her car. Gonzales yelled at Smith to stop and began running after him. She noticed that Smith had a beer bottle in his hand. He threw the bottle away as Gonzales chased him. Gonzales also noticed Smith was wearing a black leather fanny pack around his waist. Gonzales caught up with Smith and tackled him. The fanny pack fell off during the struggle. She then arrested Smith for opening or consuming liquor in a public place.

Gonzales handcuffed Smith and retrieved both the fanny pack and one of Smith's shoes. she walked back to her car, placed Smith in the backseat and put the fanny pack on the front seat. At some point Gonzales consulted briefly with another officer at the scene, left the car to pick up full beer bottles that were lying on the ground, and reported via radio that she had a person in custody. She also may have performed a radio warrant check, although she does not remember doing so.

Gonzales eventually search the fanny pack in her car, uncovering a pipe, some packages of marijuana, several plastic baggies, and a scale with cocaine residue. According to the Court of Appeals, the search occurred between 9 and 17 minutes after the arrest. Prior to trial Smith moved to suppress the evidence seized from the fanny pack on the grounds that there were no exigent circumstances to justify the officer's warrantless search. The trial court found that the search was reasonable as being incident to arrest, denied the motion and subsequently found Smith guilty of possession of cocaine.

The Court of Appeals reversed the trial court. The court of Appeals held that the search could not be justified as a search incident to arrest because the fanny pack was in the exclusive control of the arresting officer at the time of the search. Because the Court of Appeals misinterpreted current federal law, we reverse.

[Footnote, citations omitted]

ISSUE AND RULING: Was the search of the fanny pack a search "incident to arrest"?
(ANSWER: No) Result: Yakima County Superior Court conviction for possession of cocaine affirmed; Court of Appeals ruling reversed.

ANALYSIS:

The opinion of the unanimous Supreme Court declares that under the Fourth Amendment of the United States Constitution, a search incident to arrest is valid:

(1) if the object searched was within the arrestee's control when he or she was arrested; and (2) if the events occurring after the arrest but before the search did not render the search unreasonable.

(1) Control Issue

Turning first to the question of whether the fanny pack was within Smith's control when he was arrested, the Court declares:

An object is . . . within the control of an arrestee for the purposes of a search incident to an arrest as long as the object was within the arrestee's reach immediately prior to, or at the moment of, the arrest.

Smith was wearing the fanny pack when Gonzales tackled him. The fanny pack fell off during the struggle that preceded the arrest, and was within "one or two steps" of Smith at the time of the arrest. Thus Smith was in actual physical possession of the fanny pack just prior to the arrest, and the fanny pack was within his reach at the moment of arrest. For search incident to arrest purposes, therefore, the fanny pack was in his control at the time of arrest.

(2) Reasonableness of Actions

Turning to the second question, the reasonableness of the officer's actions after seizing the fanny pack and before conducting the search, the Court breaks the question into two subquestions -- (a) Was it reasonable to open the pack after the arrestee had been secured in handcuffs in the back of a patrol car? and (b) Was the 9 to 17 minute delay in conducting the fanny pack search unreasonable?

As to the first subquestion, the Court holds that an otherwise lawful search incident to arrest -- whether of a container or a vehicle or of part of a room, presumably -- is not made unlawful simply because the arrestee has first been secured before the search is conducted.

As to the "delay" subquestion, while noting that a 17 minute delay in conducting a search incident to arrest might make it unreasonable in some circumstances, the delay here was reasonable because the officer was acting to secure the scene and to protect herself and the public:

In this case, all of the actions leading to the delay were reasonable. First, Officer Gonzales left the car to pick up several full bottles of beer lying on the ground. This action was reasonable because there were many juveniles in the parking lot and the lot was near an elementary school. Second, Gonzales consulted with

another officer on the scene concerning whether the situation was under control. Given the large number of people in the parking lot, this consultation was reasonable. Third, Gonzales used her radio to report that she had someone in custody. This is her normal procedure and is reasonably designed to keep others informed of her situation. Finally, Gonzales may have performed a radio warrant check. This, too, is normal procedure and is a reasonable method of determining the potential dangerousness of the arrestee. Thus this case does not involve delay caused by unnecessarily time-consuming activities unrelated to the securing of the suspect and the scene. Officer Gonzales' activities were all incident to the arrest and, under the facts of this case, the delay was reasonable.

LED EDITOR'S COMMENT:

This case did not raise any state constitutional law issues, but we do not believe that any different rule applies under our state constitution's article 1, section 7. In its reading of the Fourth Amendment rule for search incident to arrest, we believe that this decision will be helpful to prosecutors in trying to overcome a couple of bizarre Court of Appeals rulings which try to distinguish between types of containers searched incident to arrest. See

The rule for searches "incident to arrest" articulated in Smith strongly implies that all "objects" within an arrestee's control at the moment of custodial arrest are subject to a contemporaneous search. Moreover, Smith is an encouraging case because it demonstrates that the current Supreme Court will not distort Fourth Amendment doctrine in order to reach a libertarian result in the area of search incident to arrest.

BRIEF NOTES FROM THE WASHINGTON STATE SUPREME COURT

(1) CUSTODIAL ARREST LAWFUL PER SE FOR TRAFFIC OFFENSES LISTED IN rcw 10.31.100(3) -- In State v. Reding, 119 Wn.2d 685 (1992) a unanimous State Supreme Court rules that a custodial arrest is per se lawful where law enforcement officers stop a person for reckless driving (or any of the other traffic offenses listed in RCW 10.31.100(3) with no need to articulate "other reasonable grounds" to justify not citing and releasing the violator.

In the past several years, there has been considerable confusion in the appellate courts on the issue of custodial arrest authority. That issue had developed as a result of differing views regarding the relationship of the 1978 State Supreme Court decision in State v. Hehman, 90 Wn.2d 45 (1978) (prohibiting custodial arrest for minor traffic offenses without "other reasonable grounds" to justify the arrest) to legislation at RCW 46.64.015 and RCW 10.31.100. The State Supreme Court has now resolved the issue by holding that the legislation at RCW 46.64.015 and RCW 10.31.100(3) condoned the "public policy" rule of State v. Hehman and authorizes custodial arrest for certain specified traffic offenses.

RCW 46.64.015 provides in pertinent part:

Whenever any person is arrested for any violation of the traffic laws or regulations

which is punishable as a misdemeanor or by imposition of a fine, the arresting officer may serve upon him or her a traffic citation and notice to appear in court. . . . The detention arising from an arrest under this section may not be for a period of time longer than is reasonably necessary to issue and serve a citation and notice, except that the time limitation does not apply under any of the following circumstances:

- (1) Where the arrested person refuses to sign a written promise to appear in court as required by the citation and notice provisions of this section;
- (2) Where the arresting officer has probable cause to believe that the arrested person has committed any of the offenses enumerated in RCW 10.31.100(3), as now or hereafter amended;
- (3) Where the arrested person is a nonresident and is being detained for a hearing under RCW 46.64.035.

In turn, RCW 10.31.100 provides in pertinent part:

A police officer may arrest a person without a warrant for committing a misdemeanor or gross misdemeanor only when the offense is committed in the presence of the officer, except as provided in subsections (10 through (8) of this section.

...

(3) Any police officer having probable cause to believe that a person has committed or is committing a violation of any of the following traffic laws shall have the authority to arrest the person:

- (a) RCW 46.52.010, relating to duty on striking an unattended car or other property;
- (b) RCW 46.52.020, relating to duty in case of injury to or death of a person or damage to an attended vehicle;
- (c) RCW 46.61.500 or 46.61.530, relating to reckless driving or racing of vehicles;
- (d) RCW 46.61.502 or 46.61.504, relating to persons under the influence of intoxicating liquor or drugs;
- (e) RCW 46.20.342, relating to driving a motor vehicle while operator's license is suspended or revoked;
- (f) RCW 46.61.525, relating to operating a motor vehicle in a negligent manner.

Accordingly, the State Supreme Court holds that custodial arrest is per se lawful for any of the traffic crimes specified in subsection (3) of RCW 10.31.100. On the other hand, the Court also makes clear that the misdemeanor of driving without a license, not listed in subsection (3), would require additional grounds to justify a custodial arrest. (However, the Supreme Court does cite

with approval an earlier Court of Appeals decision which held that such additional grounds are present where the unlicensed driver has no license and no proof of ownership of the vehicle.)

Result: King County Superior Court order affirming District Court dismissal of reckless driving charges against Reding reversed; case remanded for trial.

(2) "ESSENTIAL ELEMENTS" RULE FOR CHARGING DOCUMENTS APPLIES TO CRIMINAL CITATIONS AS WELL AS CRIMINAL COMPLAINTS -- In the consolidated cases of Auburn (City of) v. Brooke, and Seattle (City of) v. Wandler, 119 Wn.2d 623 (1992) a unanimous Washington Supreme Court holds that the "essential elements" rule for criminal charging documents applies to officer-issued citations as well as prosecutor-issued complaints. Because the officer-issued citations to defendants Brooke and Wandler did not describe each of the elements of the crimes charged in the respective cases, the Court declares that their convictions on those charges must be reversed and their cases remanded for retrial if the respective city prosecutors elects to file amended complaints.

The citation issued to Brooke on March 18, 1987 by an Auburn police officer described his alleged disorderly conduct offense simply as "9.40.010(A)(2) Disorderly Conduct." The citation issued to Wandler on February 3, 1987 by a Seattle police officer described his alleged hit-and-run offense as "11.56.420 Hit/Run Attended."

Brooke and Wandler were each convicted in the respective municipal court proceedings. Then each lost an appeal to superior court. Thereafter, each raised the "essential elements" argument for the first time in the Court of Appeals, which, in each case, rejected the challenged and affirmed the conviction. Review was then accepted by the State Supreme Court.

The "essential elements" rule is a constitutionally grounded criminal procedure (accordingly, therefore, the rule does not apply to civil citations) rule which requires that a defendant be informed in a charging document of each of the elements of the crime charged. While there was some ambiguity in a 1989 State Supreme Court case regarding the standard to be applied to officer-issued citations (as opposed to prosecutor-issued complaints and informations), the Court here clarifies that a citation does not satisfy the rule where the officer merely specifies the criminal code number violated and naming the crime (unless the name -- such as "driving while intoxicated" also describes the essential elements of the crime).

The prosecutors in the Brooke and Wandler cases conceded that the essential elements of the crimes were not written on the defendants' citations. Accordingly, the State Supreme Court reverses their convictions.

Result: convictions reversed and cases remanded to the respective municipal courts to permit the city prosecutors to amend the citations to specify the essential elements of the crimes charged.

LED EDITOR'S COMMENT: Knowing that no constitutional amendment is in the works, to reform what we think is a silly rule we see two possible solutions to the problem created by this case: either (1) law enforcement officers must have a resource which allows them to correctly describe the essential elements for the crime cited [WE ARE AWARE OF NO SUCH RESOURCE AT PRESENT OR OF PLANS FOR SAME], or prosecutors must monitor all criminal citations for compliance with the rule [IT IS OUR UNDERSTANDING THAT MOST AGENCIES HAVE USED THIS AS THE SHORT-TERM SOLUTION TO THE

"ESSENTIAL ELEMENTS" RULE PROBLEM]. If anyone out there knows of another solution or of a resource for officers which would effect solution #1, please let us know by calling us at (206) 464-6039, FAX (206) 587-4290.

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