



Law Enforcement

December 1999

Digest

HONOR ROLL

500th Session, Basic Law Enforcement Academy – July 21st, 1999 through October 13th, 1999

President: Page Heath – Pierce County Sheriff's Office
 Best Overall: Scott Thorpe – Tacoma Police Department
 Best Academic: Mark Gosling – Pierce County Sheriff's Office
 Best Firearms: Dennis Banach – Pierce County Sheriff's Office
 Tac Officer: Trooper Mike Ware – Washington State Patrol

497th Session, Seattle Basic Law Enforcement Academy – February 2nd, 1999 through July 23rd, 1999

President: Seth Grant – King County Sheriff's Office
 Best Overall: Seth Grant – King County Sheriff's Office
 Best Academic: Robert Peth – Seattle Police Department
 Best Firearms: Seth Grant – King County Sheriff's Office
 Tac Officer: Jeff Geoghagan – Seattle Police Department

496th Session, Seattle Basic Law Enforcement Academy – September 9th, 1998 through February 23rd, 1999

President: Wayne McCann – Seattle Police Department
 Best Overall: Trung Nguyen – Seattle Police Department
 Best Academic: Theresa Digalis – Seattle Police Department
 Best Firearms: Gary Berntson – Seattle Police Department
 Tac Officer: Grant Ballingham – Seattle Police Department

485th Session, Seattle Basic Law Enforcement Academy – June 15th, 1998 through November 17th, 1998

President: Marc Garth Green – Seattle Police Department
 Best Overall: Marc Garth Green – Seattle Police Department
 Best Academic: Kevin Jones – Seattle Police Department
 Best Firearms: Aaron Keating – Seattle Police Department
 Tac Officer: Nick Nibler – King County Sheriff's Office

DECEMBER LED TABLE OF CONTENTS

1999 SUBJECT MATTER INDEX..... 2

BRIEF NOTE FROM THE NINTH CIRCUIT OF THE U.S. COURT OF APPEALS..... 12

DRUG-DOG SNIFF OF STUDENTS DECLARED TO BE AN UNREASONABLE “SEARCH”
B.C. v. Plumas (Cal.) Unified School District, ___ F.3d ___ (9th Cir. 1999) [1999 WL 958926]..... 12

WASHINGTON STATE SUPREME COURT 13

STROUD’S “SEARCH INCIDENT” RULE FOR CARS REVISED AS TO ITEMS KNOWN TO BELONG TO NONARRESTEES; “BRIGHT LINE” BLURRED AS COURT RESTRICTS SEARCH AUTHORITY
State v. Parker, State v. Jines, State v. Hunnel, ___ Wn.2d ___ (1999) 13

WASHINGTON STATE COURT OF APPEALS..... 19

TERRY STOP OF MAN URINATING IN PUBLIC OK’D, AND WARRANT CHECK HELD OK AS WELL
State v. Villarreal, ___ Wn. App. ___ (Div. III, 1999) [984 P.2d 1064]..... 19

“INITIATION OF CONTACT RULES UNDER FIFTH AND SIXTH AMENDMENTS”: CORRECTION NOTICE REGARDING OUR ARTICLE 22

1999 SUBJECT MATTER INDEX

LED EDITOR'S NOTE: This is our annual LED subject matter index. It covers all LED entries from January 1999 through December 1999. Since 1988 we have published a twelve-month index each December. In the past 20 years, we have also published three multi-year subject matter indexes. In 1989, we published an index covering LED's from January 1979 through December 1988. In 1994, we published a five-year subject matter index covering LED's from January 1989 through December 1993. In 1999, we published a five-year index covering LED's from January 1994 through December 1998. The 1989-1993 cumulative index, the 1994-1998 cumulative index, and monthly issues of the LED from January 1992 on (excluding January and February of 1993) are available on the CJTC Internet Home Page at: <http://www.wa.gov/cjt>.

ACCOMPLICE LIABILITY (Chapter 9A.08 RCW)

Accomplice to gay-bashing attack punishable for "malicious harassment" based on other participant's malice. State v. Lynch, 93 Wn. App. 716 (Div. I, 1999) - April 99:14

Accomplice liability in child assault case cannot be based solely on omission or failure of foster parent to carry out civil duty to protect child. State v. Jackson, 137 Wn.2d 712 (1999) - August 99:19

ADA – AMERICANS WITH DISABILITIES ACT

"Disability" for purposes of federal ADA's anti-discrimination law takes into account disability-mitigating measures. Sutton et. al. v. United Air Lines, Inc., 119 S.Ct. 2139 (1999); Murphy v. United Parcel Service, Inc., 119 S.Ct. 2133 (1999); and Albertsons, Inc. v. Krinkinburg, 119 S.Ct. 2162 (1999) – September 99:03

ALIENS

When foreign nationals are subjected to custodial arrest in the U.S., the arrestees should be advised of the right to seek assistance from their consulates; where the foreign country is a "mandatory notification country," the consulate must be notified of the arrest despite the arrestee's wishes. Article on Vienna Convention on Consular Relations. - May 99:18

"Vienna Convention Rights" violation may result in suppression of confession. U.S. v. Lombera-Camorlinga, 170 F.3d 1241 (9th Cir. 1999) – June 99:03

ANIMAL CONTROL

First degree animal cruelty conviction upheld. State v. Andree, 90 Wn. App. 917 (Div. I, 1998) – March 99:16

ARREST, STOP AND FRISK

Officer had probable cause to arrest for DUI based on FST physicals and on defendant's admission to drinking; no collateral estoppel in DOL revocation action where error of law in earlier criminal proceeding. Thompson v. DOL, 91 Wn. App. 887 (Div. II, 1998) – February 99:18 – NOTE: collateral estoppel ruling later reversed by Washington Supreme Court decision; see below under this topic.

Alaska includes dispatchers under police team/collective knowledge rule for testing probable cause and reasonable suspicion. Article. - February 99:21

Drivers, but not passengers, may be automatically ordered out of, or back into, their vehicles at routine traffic stops. State v. Mendez, 137 Wn.2d 208 (1999) – March 99:04

Car prowling seizure supported by reasonable suspicion, obstructing arrest by PC. State v. Contreras, 92 Wn. App. 307 (Div. II, 1998) – March 99:10

Belt-less MV passenger in mid-20's claiming never to have had ID lawfully detained for warrant check; also, "automatic standing" addressed . State v. Chelly, 94 Wn. App. 254 (Div. I, 1999) – April 99:03

Court validates arrest of Colville tribal member where city of Omak officers chased him onto reservation trust land. Note: part of court's analysis of extraterritorial arrest authority may be off the mark. State v. Waters, 93 Wn. App. 969 (Div. III, 1999) – May 99:11

No “reasonable suspicion” to stop man with a gun to check for alien firearm license; rarity of issuance of alien gun licenses combined with fact that Spanish appeared to be suspect’s primary language did not justify his seizure. State v. Almanza-Guzman, 94 Wn. App. 563 (Div. I, 1999) – June 99:13

Is custodial arrest lawful for a “minor offender” who is unable to reasonably ID himself or herself to an investigating officer? Article. - July 99:16

“Pretext stop”: Washington Supreme Court holds in 5-4 independent grounds interpretation of Washington constitution’s article 1, section 7 that “pretext stop” rule requires objective and subjective review of stop. State v. Ladson, 138 Wn.2d 343 (1999) – September 99:05

“Fresh pursuit,” “emergency” provisions of RCW 10.93.120 authorized Tacoma officer to go into Lakewood to find and arrest DUI suspect. City of Tacoma v. Durham, 95 Wn. App. 876 (Div. II, 1999) – September 99:11

WACIC stolen vehicle report, alone, not probable cause to arrest, but combined with damage to vehicle’s driver door and trunk, meets PC test. State v. Sandholm, 96 Wn. App. 846 (Div. I, 1999) – November 99:11

“Pretext stop” found where patrol officer followed suspect’s car from drug hot spot several blocks before seeing traffic violation. State v. DeSantiago, ___ Wn. App. ___ (Div. III, 1999) [983 P.2d 1173] – November 99:12

“Community caretaking” role justifies “seizure” of young-looking teen girl to ensure her safety; also, frisk upheld on totality of facts. State v. L. K., 95 Wn. App. 686 (Div. I, 1999) – November 99:18

“Seizure” of person occurred where officer asked suspect to wait while officer checked to see if arrest warrant was still outstanding on suspect. State v. Barnes, 96 Wn. App. 217 (Div. III, 1999) – November 99:18

Terry stop of man urinating in public ok’d, and warrant check held ok as well. State v. Villarreal, ___ Wn. App. ___ (Div. III, 1999) [984 P.2d 1064] – December 99:19

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

No need to prove defendant’s knowledge of victim/officer’s status in prosecution for third degree assault of law enforcement officer. State v. Brown, 94 Wn. App. 327 (Div. I, 1999) – April 99:09 NOTE: The Washington Supreme Court has accepted review of this case.

BAIL BONDS

Bail properly forfeited on illegal alien who apparently procured her own deportation after posting bail. State v. Banuelos, 91 Wn. App. 860 (Div. I, 1998) – April 99:15

BAIL JUMPING (RCW 9A.76.170)

“Reasonable person” knowledge inference helps “bail jumping” conviction to withstand defendant’s “I got confused about my court dates” defense. State v. Bryant 89 Wn. App. 857 (Div. I, 1998) - February 99:19

BRIBERY AND RELATED LAWS

Federal anti-gratuity statute doesn’t forbid federal prosecutors’ leniency-for-testimony deals. U.S. v. Singleton, 144 F.3d 1343 (10th Cir. 1998) – March 99:04

BURGLARY (Chapter 9A.52 RCW)

Storage area at apartment complex was separate building for purposes of burglary statute. State v. Miller, 91 Wn. App. 869 (Div. II, 1998) – February 99:14

Evidence (pry marks and chipped paint) sufficient to support conviction for attempted burglary. State v. Bencivenga, 137 Wn.2d 703 (1999) – October 99:04

Anti-merger provision of burglary statute means what it says. State v. Sweet, 138 Wn.2d 466 (1999) - November 99:06

CIVIL LIABILITY (See also ADA – Americans with Disabilities Act)

Dispatcher statement in 911 call creates jury question under “public duty doctrine.” Beal v. City of Seattle, 134 Wn.2d 769 (1998) – January 99:07

Parts of interpreter act stricken as improperly adopted. Patrice v. Murphy, 136 Wn. 2d 845 (1998) – January 99:10

Part of lawsuit over showing of corpse photos to others allowed to proceed. Reid v. Pierce County, 136 Wn.2d 195 (1998) – February 99:09

High court strikes down Ninth Circuit’s expansive Due Process notice requirement for police seizures of personal property. City of West Covina v. Perkins, 1999 WL 9696 (1999) – March 99:03

Law enforcement agencies carrying out their duties may not routinely take media into private residences without consent of residents. Wilson v. Layne, 143 L.Ed 2d 818 (1999) – August 99:12

“Disability” for purposes of federal ADA’s anti-discrimination law takes into account disability-mitigating measures. Sutton et. al. v. United Air Lines, Inc., 119 S.Ct. 2139 (1999); Murphy v. United Parcel Service, Inc., 119 S.Ct. 2133 (1999); and Albertsons, Inc. v. Krinkinburg, 119 S.Ct. 2162 (1999) – September 99:03

City probation counselors and county pretrial release counselors have same civil liability duty to protect public as do state parole officers. Hertog v. Seattle, 138 Wn.2d 265 (1999) – October 99:02

Judge’s decision to not revoke probation of drunk driver breaks causal link in suit against probation officer arising out of vehicular homicide incident. Bishop v. Miche and King County, 137 Wn.2d 518 (1999) – October 99:03

In civil suit over arrest after father-son fight, court holds possibility of self defense claim is generally not an element of probable cause to arrest. McBride v. Walla Walla, 95 Wn. App. 33 (Div. III, 1999) - October 99:16

CIVIL SERVICE AND EMPLOYMENT LAW

After losing civil service appeal, officer may pursue grievance remedy. Civil Service Commission of the City of Kelso v. City of Kelso and others, 137 Wn.2d 166 (1999) – March 99:09

COLLATERAL ESTOPPEL/RES JUDICATA

Officer had probable cause to arrest for DUI based on FST physicals and on defendant’s admission to drinking; no collateral estoppel in DOL revocation action where error of law in earlier criminal proceeding. Thompson v. DOL, 91 Wn. App. 887 (Div. II, 1998) – February 99:18 NOTE: collateral estoppel ruling later reversed by Washington Supreme Court decision; see next entry under this topic.

Collateral estoppel rule bars license revocation where key issue in license matter was previously resolved against the state in a criminal prosecution arising from the same incident. Thompson v. DOL, 138 Wn. 2d 783 (1999) – November 99:05

CORPUS DELICTI RULE

Corpus delicti rule does not apply to statements made in negotiating prostitution deal – rule covers only admissions of guilt as to past acts. State v. Dyson, 91 Wn. App. 761 (Div. I, 1998) – February 99:13

DUI defendant waived corpus delicti challenge under Hamrick/Corbett rule by testifying at her DUI trial about her driving. State v. Liles-Heide, 94 Wn. App. 569 (Div. I, 1999) – June 99:19

Corpus delicti for knowing violation of domestic violence protection order satisfied by “return of service” evidence. State v. Phillips, 94 Wn. App. 829 (Div. I, 1999) - November 99:20

CRIMINAL MISTREATMENT (Chapter 9A.42 RCW)

PTSD cannot be basis for charge of second degree criminal mistreatment. State v. Van Woerden (and two others), 93 Wn. App. 110 (Div. II, 1998) – April 99:16

DOMESTIC VIOLENCE

Filing of jury verdict not yet reduced to judgment is “conviction” for purposes of felony classification of repeat violation of “no contact” order. State v. Jackson, 91 Wn. App. 488 (Div. I, 1998) – February 99:20

Victim/petitioner cannot “consent” to violation of DVPA order. State v. DeJarlais, 136 Wn.2d 939 (1998) – March 99:09

“No contact” DV order issued pre-trial under chapter 10.99 RCW ceases to have effect when underlying criminal charges dismissed. State v. Anaya, 95 Wn. App. 751 (Div. I, 1999) – August 99:20

Jailed DV violator violates DV order by telephoning victim from jail. State v. Rodman, 94 Wn. App. 930 (Div. I, 1999) – October 99:19

Domestic violence protection order’s distance restraint provisions again (as in Jacques v. Sharp) held not criminally enforceable. State v. Chapman, 96 Wn. App. 495 (Div. III, 1999) – November 99:15

Corpus delicti for knowing violation of domestic violence protection order satisfied by “return of service” evidence. State v. Phillips, 94 Wn. App. 829 (Div. I, 1999) - November 99:20

DOUBLE JEOPARDY; EXCESSIVE FINES

Double jeopardy statute includes military nonjudicial penalty as prior prosecution. State v. Ivie, 136 Wn.2d 173 (1998) – January 99:09

DUE PROCESS

High court strikes down Ninth Circuit's expansive due process notice requirement for police seizures of personal property. City of West Covina v. Perkins, 525 U.S. 234 (1999) – March 99:03

ENTRAPMENT (RCW 9A.16.070)

Court explores entrapment issue in case of bribe-seeking officer. State v. O'Neill, 91 Wn. App. 978 (Div. I, 1998) – March 99:18

ESCAPE (RCW 9A.76.110-130) AND RELATED CRIMES

Failing to report to work crew duty per criminal sentence is “escape.” State v. Guy; State v. Ammons, 136 Wn.2d 453 (1998) – January 99:09

EVIDENCE LAW

Trial court in “eluding” case should not have admitted trooper’s opinion testimony that driver was “trying to get away.” State v. Farr-Lenzini, 93 Wn. App. 453 (Div. II, 1999) – April 99:13

Clergy-penitent privilege of RCW 5.60.060(3) – penitent need not have religion. State v. Martin, 137 Wn.2d 774 (1999) – August 99:16

No privilege for confidential communications with licensed nurses. State v. Vietz, 94 Wn. App. 870 (Div. II, 1999) – October 99:19

EXPLOSIVES AND FIREWORKS

Fireworks exception in explosives act given narrow interpretation. State v. Yokley, 91 Wn. App. 773 (Div. I, 1998) – February 99:19 NOTE: this case is now on review in the Washington Supreme Court.

FIREARMS LAWS (Chapter 9.41 RCW) AND OTHER WEAPONS LAWS

Federal Brady law’s instant check system takes effect. Article. January 99:19

Malfunctioning gun was “firearm” for purposes of RCW 9A.36.021, 9.94A.125, 9.41.010. State v. Faust, 93 Wn. App. 373 (Div. II, 1998) - March 99:16

Firearms possession bar for felons has no date-of-conviction limitation. State v. Weed, 91 Wn. App. 810 (Div. II, 1998) – March 99:20

Evidence of “constructive possession” of firearm and “armed with a deadly weapon” sufficient where guns found in one trailer and meth lab found in another trailer on same property. State v. Simonson, 91 Wn. App. 874 (Div. II, 1998) – April 99:17

Attorney General opinion concludes that there is no bar to employment of officers of ages 18-20. September 99:19

Felon who left gun in car for 3 days “used” the car to commit felony possession of gun, and hence driver’s license revocation was required. State v. Batten, 95 Wn. App. 127 (Div. II, 1999) – November 99:17 NOTE: The Washington Supreme Court has accepted review of this case.

Starter’s pistol not a firearm or dangerous weapon for purposes of no-guns-at-schools prohibition of RCW 9.41.280. State v. C.Q., 96 Wn. App. 273 (Div. I, 1999) – November 99:20

FORFEITURE LAW (See also “Double Jeopardy”; “Due Process”; “Excessive Fines” and “Uniform Controlled Substance Act”)

Real property forfeiture action dismissed because “arrest” warrant for the property not served. Bruett and Kalsbeek v. Real Property Known As 18328 11th Ave. N.E., Seattle, 93 Wn. App. 290 (Div. I, 1998) – April 99:13

No search warrant needed under Fourth Amendment to seize vehicle which is subject to seizure under state drug forfeiture statute. Florida v. White, 143 L.Ed. 2d 748 (1999) – August 99:13

FREEDOM OF SPEECH

Pierce County ordinance regulating erotic dance studios upheld. DCR, Inc. v. Pierce County, 92 Wn. App. 660 (Div. II, 1998) – April 99:14

Word “profane” in Bellevue phone harassment ordinance not unconstitutional. Bellevue v. Lorang, 92 Wn. App. 186 (Div. I, 1998) – April 99:14 NOTE: this case is now on review in the Washington Supreme Court.

“Intimidating a judge” statute upheld against constitutional attack. State v. Knowles, 91 Wn. App. 367 (Div. II, 1998) – April 99:18

“GIFT OF PUBLIC FUNDS” PROHIBITION

Locksmith service loses challenge to police practice of opening locked vehicle doors in non-emergency situations – no “gift of public funds” problem. Hudson v. City of Wenatchee, 94 Wn. App. 990 (Div. III, 1999) – June 99:15

IMPLIED CONSENT, BREATH, AND BLOOD TESTS FOR ALCOHOL CONTENT

Vehicular homicide conviction upheld - a) technician drawing blood doesn’t need permit from toxicologist; and b) intoxication evidence sufficient. State v. Merritt, 91 Wn. App. 969 (Div. I, 1998) – April 99:18

Failure to twice blow sufficient air into BAC device was a “refusal.” Rockwell v. DOL, 94 Wn. App. 531 (Div. III, 1999) – October 99:14

In BAC testing process, officers must actually watch the DUI arrestee for the 15-minute observation period [and administrative law judge must so find]. Walk v. DOL, 95 Wn. App. 653 (Div. III, 1999) – October 99:17

Delay in getting printout from BAC machine does not invalidate BAC test. City of Mount Vernon v. Mount Vernon Municipal Court, 93 Wn. App. 501 (Div. I, 1998) - October 99:18

DOL license revocation upheld despite officer’s failure to send report of breath test refusal to DOL within 72 hours of refusal per implied consent statute. Frank v. DOL, 94 Wn. App. 306 (Div. III, 1999) – October 99:18

Abbreviation as to “place signed” on implied consent form is mere technical defect; hence, Department of Licensing had jurisdiction to revoke driver’s license. Veranth v. DOL, 91 Wn. App. 339 (Div. I, 1998) – October 99:18

INDIANS AND LAW ENFORCEMENT

Court validates arrest of Colville tribal member where city of Omak officers chased him onto reservation trust land. Note: part of court’s analysis of extraterritorial arrest authority may be off the mark. State v. Waters, 93 Wn. App. 969 (Div. III, 1999) – May 99:11

INFANCY DEFENSE (RCW 9A.04.050)

11-year-old child molester had criminal capacity. State v. T.E.H., 91 Wn. App. 908 (Div. I, 1998) – February 99:16

INSANITY DEFENSE (RCW 9A.12.010) AND RELATED DEFENSES

“Diminished capacity” defense made easier. State v. Ellis, 136 Wn.2d 498 (1998) – January 99:09

INTERROGATIONS AND CONFESSIONS (See also “Sixth Amendment and related State Law Provisions”)

No Miranda warning required for “background” question because not “interrogation.” Personal Restraint of Pirtle, 136 Wn. 2d 467 (1998) – January 99:08

Where attorney contacted police and tried to stop custodial interrogation of would-be client, police were not required to stop the interrogation nor to tell the suspect of the communication; but appellate court questions wisdom of underlying rule. State v. Corn, 95 Wn. App. 41 (Div. III, 1999) – June 99:03

Post-Mirandizing deception by police interrogator does not render statement involuntary; also, re-Mirandizing held not necessary after one-hour break. State v. Burkins, 95 Wn. App. 41 (Div. I, 1999) – June 99:10

Quarles’ “public safety” exception to Miranda warnings requirement applied to police communications with barricaded double-murderer; also, “premeditation” evidence held sufficient; but shackling of potentially violent defendant at trial held improper and prejudicial as to death sentence. State v. Finch, 137 Wn.2d 792 (1999) – August 99:17

Constitutionally, officer may testify to DUI defendant’s refusal to perform FST’s. City of Seattle v. Stalsbroten, 138 Wn.2d 227 (1999) – August 99:20

Detectives were not required to interrupt custodial interrogation of suspect when attorney came to stationhouse; postponing preliminary appearance on unrelated charge was not lawful but did not by itself make confession involuntary. State v. Bradford, 95 Wn. App. 535 (Div. III, 1999) – September 99:15

5-to-10-second wait sufficient on “knock and announce” issue; also, Miranda waiver held implied; but deadly weapon sentence enhancement voided. State v. Johnson, 94 Wn. App. 882 (Div. I, 1999) – October 99:11

Suspect’s refusal to sign Miranda form is not assertion of rights; also, his demand for money from bank-teller supports robbery conviction. State v. Parra and Kent, 96 Wn. App. 95 (Div. I, 1999) – November 99:19

INTIMIDATING A JUDGE (RCW 9A.72.160)

“Intimidating a judge” statute upheld against constitutional attack. State v. Knowles, 91 Wn. App. 367 (Div. II, 1998) – April 99:18

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

Parent can be guilty of unlawful imprisonment of child. State v. Kinchen, 92 Wn. App. 442 (Div. I, 1998) – March 99:17

LEGISLATION (NEW)

Medical Marijuana Initiative Takes Effect. Article - January 99:21

1999 Legislative Update -- Part One. July 99:02-16

1999 Legislative Update -- Part Two. August 99:02-10

1999 Legislative Index. August 99:10

Reminder Regarding “CJ’s Law” Adopted In 1998. Article - August 99:11

LINEUPS, PHOTO IDENTIFICATIONS AND SHOWUPS

Trial court lineup grooming order upheld. State v. Smith, 90 Wn. App. 856 (Div. I, 1998) – March 99:19

State wins on open view, automatic standing, photo montage issues. State v. Bobic, 94 Wn. App. 702 (Div. I, 1999) – October 99:08 NOTE: **LED** Editor announces availability of article addressing identification procedures.

Photo montage including pictures of all three suspects among the eight persons depicted held not impermissibly suggestive [but questioned by **LED editor].** State v. Eacret, 94 Wn. App. 282 (Div. I, 1999) – October 99:10

LOSS OR DESTRUCTION OF EVIDENCE

State wins on constructive possession, preservation-of-evidence issues. State v. Potts, 93 Wn. App. 82 (Div. III, 1998) – September 99:17

MALICIOUS HARASSMENT (RCW 9A.36.080)

Accomplice to gay-bashing attack punishable for “malicious harassment” based on other participant’s malice. State v. Lynch, 93 Wn. App. 716 (Div. I, 1999) – April 99:14

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

Perpetrator’s “extreme indifference” may be present where perpetrator has focus on specific victim under “homicide by abuse” statute. State v. Edwards, 92 Wn. App. 157 (Div. I, 1998) – March 99:15

Court upholds “murder one”, “extreme indifference” conviction of enraged driver who ran stop light. State v. Barstad, 93 Wn. App. 553 (Div. III, 1999) – April 99:12

Quarles’ “public safety” exception to Miranda warnings requirement applied to police communications with barricaded double-murderer; also, “premeditation” evidence held sufficient; but shackling of potentially violent defendant at trial held improper and prejudicial as to death sentence. State v. Finch, 137 Wn.2d 792 (1999) – August 99:17

Shooting gun from one moving vehicle at another moving vehicle supports 1st degree murder conviction per “extreme indifference” variation of crime. State v. Pastrana, 94 Wn. App. 463 (Div. II, 1999) – October 99:18

MUTUAL AID PEACE OFFICER POWERS ACT (Chapter 10.93 RCW)

Court validates arrest of Colville tribal member where city of Omak officers chased him onto reservation trust land. Note: part of court’s analysis of extraterritorial arrest authority may be off the mark. State v. Waters, 93 Wn. App. 969 (Div. III, 1999) – May 99:11

Consent portion of Mutual Aid Agreement was valid under “Mutual Aid Peace Officer Powers Act” (chapter 10.93 RCW), even though remainder of agreement was not valid due to failure to get council sign-off per chapter 39.34 RCW. State v. Plaggemeier, 93 Wn. App. 472 (Div. II, 1999) – June 99:19

“Fresh pursuit,” “emergency” provisions of RCW 10.93.120 authorized Tacoma officer to go into Lakewood to find and arrest DUI suspect. City of Tacoma v. Durham, 95 Wn. App. 876 (Div. II, 1999) – September 99:11

NECESSITY DEFENSE

Common law “necessity” defense rejected in manufacturing marijuana case. State v. Williams, 93 Wn. App.

340 (Div. II, 1998) – April 99:16

PROSTITUTION

Corpus delicti rule does not apply to statements made in negotiating prostitution deal – rule covers only admissions of guilt as to past acts. State v. Dyson, 91 Wn. App. 761 (Div. I, 1998) - February 99:13

PUBLIC RECORDS, ACCESS TO COURT RECORDS AND PROCEEDINGS

Public Records Act held to exempt prosecutor records which would be protected from civil discovery by “work product” doctrine. Limstrom v. Ladenburg, 136 Wn.2d 595 (1998) – January 99:10

Public Records Act requires disclosure of records re wages, hours, and benefits of public employees. Tacoma Public Library v. Woessner, 90 Wn. App. 205 (Div. II, 1998) – April 99:15

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

“Sexual contact” evidence sufficient in touch-through-clothing child molesting case involving adult with no caretaking function as to victim. State v. Whisenhunt, 96 Wn. App. 18 (Div. III, 1999) - November 99:19

RESTITUTION

Foreseeability of harm need not be proven to justify restitution order. State v. Enstone, 137 Wn.2d 675 (1999) – October 99:05

ROBBERY (Chapter 9A.56 RCW)

Low key demands for money sufficient to support robbery conviction. State v. Collinsworth, 90 Wn. App. 546 (Div. I, 1997) – March 99:12

Suspect’s refusal to sign Miranda form is not assertion of rights; also, his demand for money from bank-teller supports robbery conviction. State v. Parra and Kent, 96 Wn. App. 95 (Div. I, 1999) – November 99:19

SCHOOL SAFETY

Gregoire and Bergeson release safety guide to all Washington schools. News release. - November 99:21

SEARCH AND SEIZURE

Carroll Doctrine

“Carroll doctrine,” “PC car search” decision of U.S. Supreme Court holds that police can search all personal effects in car, whether they belong to suspect or nonsuspects; ruling may not directly impact Washington law enforcement. Wyoming v. Houghton, 143 L.Ed 2d 408 – May 99:02

Fourth Amendment “Carroll” doctrine does not require separate finding of exigency (but alas, no “Carroll” doctrine in Washington). Maryland v. Dyson, 119 S.Ct. 2013 (1999) – September 99:02

Consent Search Exception

Violation of Leach rule requiring that consent to search be obtained from all present cohabitants doesn’t require exclusion of evidence against a consenting cohabitant. State v. Walker, 136 Wn.2d 678 (1998) – January 99:03

Emergency/exigency entry issue avoided by court in DV case; consent search request held not subject to Ferrier rule, because not “knock and talk”; also, 10th day execution of search warrant ok, as probable cause not then stale. State v. Leupp, 96 Wn. App. 324 (Div. II, 1999) – October 99:05

Consent for entry of residence for purposes other than search for contraband not subject to warnings requirement of State v. Ferrier. State v. Bustamonte-Davila, 138 Wn. 2d 964 (1999) – November 99: 02

Execution of Search Warrants

No justification for frisk of non-occupant visitor who arrived at a motel room where a search warrant was being executed. State v. Lennon, 94 Wn. App. 573 (Div. III, 1999) – May 99:04

Exigent Circumstances (And Emergencies)

Emergency/exigency entry issue avoided by court in DV case; consent search request held not subject to Ferrier rule, because not “knock and talk”; also, 10th day execution of search warrant

ok, as probable cause not then stale. State v. Leupp, 96 Wn. App. 324 (Div. II, 1999) – October 99:05

Forfeiture-Related Seizure and Search

No search warrant needed under Fourth Amendment to seize vehicle which is subject to seizure under state drug forfeiture statute. Florida v. White, 143 L.Ed 2d 748 – August 99:13

Impound-Inventory Exception (Vehicles)

Impounding passenger-less car driven by suspended driver reasonable under the totality of the circumstances, but Reynoso/Coss rule (interpretations of pre-1999 law requiring special justification for impound of car of suspended or revoked driver) retained. State v. Peterson, 92 Wn. App. 899 (Div. III, 1998) – January 99:11

Incident to Arrest (Motor Vehicle)

“Search incident to citation” not permitted. Knowles v. Iowa, 525 U.S. 113 (1998) – February 99:02

Bringing drug-sniffing dog to assist in “search incident” at a car held lawful; also, removing ashtray after dog alert there permitted as part of search. State v. Boursaw, 94 Wn. App. 629 (Div. I, 1999) – May 99:07

Entire Winnebago subject to search incident to custodial arrest of occupant; also, zipped cushion not a “locked” container under Stroud. State v. Vrieling, 97 Wn. App. 152 (Div. I, 1999) – November 99:07

Stroud’s “search incident” rule for cars revised as to items belonging to nonarrestees; “bright line” gets blurry as court restricts search authority as to nonarrestee personal effects. State v. Parker, State v. Jines, State v. Hunnel, ___ Wn.2d ___ (1999) – December 99:13

Incident To Arrest (Non-vehicle Search)

Constitutional authority for police to search at the scene incident to arrest on warrant not limited by statute at RCW 10.31.030, which requires a) reading or showing of warrant and b) affording of opportunity to post bail per Gloria Smith decision. State v. Jordan, 92 Wn. App. 25 (Div. II, 1998) – February 99:09

Strip search of young drug dealer at scene of arrest held unlawful. State v. Rulan Clewis, ___ Wn. App. ___ (Div. I, 1999) [970 P.2d 821] – May 99:15 NOTE: Prosecutor’s motion to withdraw publication is pending.

Knock And Announce (RCW 10.31.040 and Constitutional Requirements)

5-to-10 second wait sufficient on “knock and announce” issue; also, Miranda waiver held implied, but deadly weapon sentence enhancement voided. State v. Johnson, 94 Wn. App. 882 (Div. I, 1999) – October 99:11

Plain View Doctrine/Open View Doctrine (See also “Privacy Expectations” under SEARCH AND SEIZURE subtopic)

State wins on open view, automatic standing, photo montage issues. State v. Bobic, 94 Wn. App. 702 (Div. I, 1999) – October 99:08

Privacy Expectations, Scope of Constitutional Protection

Two-hour visitors to home have no 4th Amendment privacy protection. Minnesota v. Carter, 525 U.S. 83 (1998) – February 99:04

Warrantless nighttime check of garage near side-yard driveway held by Court of Appeals to have impermissibly invaded curtilage, thus violating defendant’s rights under Fourth Amendment; but Supreme Court then puts ruling on hold. State v. Ross, 91 Wn. App. 814 (Div. II, 1998) – May 99:13 NOTE: the Court of Appeals later affirmed its ruling, and the case is again pending before the Washington Supreme Court.

Drug-dog sniff of students declared to be an unreasonable “search”. B.C. v. Plumas (Cal.) Unified School District, ___ F.3d ___ (9th Cir. 1999) [1999 WL 958926] December 99:12

Probable Cause

Court criticizes broad search warrant authorization for “controlled substances,” as well as affidavit’s “nexus” generalizations: but warrant upheld. State v. Thein, 91 Wn. App. 476 (Div. I,

1998) – January 99:13 NOTE: this decision was later reversed by the Washington Supreme Court; see entry below under this topic.

Affidavit establishes probable cause for search of suspected “safe house” location. State v. Perez, 92 Wn. App. 1 (Div. I, 1998) – January 99:17

No probable cause for search of home established in affidavit a) describing suspect’s drug-dealing activities, and b) stating officer’s general experience that drug dealers commonly keep certain types of evidence at home. State v. Thein, 138 Wn.2d 133 (1999) – August 99:15

Emergency/exigency entry issue avoided by court in DV case; consent search request held not subject to Ferrier rule, because not “knock and talk;” also, 10th day execution of search warrant ok, as probable cause not then stale. State v. Leupp, 96 Wn. App. 324 (Div. II, 1999) – October 99:05

Standing

Belt-less MV passenger in mid-20’s claiming never to have had ID lawfully detained for warrant check; also, “automatic standing” addressed. State v. Chelly, 94 Wn. App. 254 (Div. I, 1999) – April 99:03

State wins on open view, automatic standing, photo montage issues. State v. Bobic, 94 Wn. App. 702 (Div. I, 1999) – October 99:08 NOTE: the Washington Supreme Court has accepted review of this case.

SELF DEFENSE/DEFENSE OF OTHERS

Man who “brought a knife to a fist fight” was not, on the totality of the circumstances, entitled to a “self defense” jury instruction; court avoids per se rule. State v. Walker, 136 Wn.2d 767 (1998) – March 99:07

Insulting words alone cannot be “provocation” justifying self defense. State v. Riley, 137 Wn.2d 904 (1999) – October 99:16

In civil suit over arrest after father-son fight, court holds possibility of self defense claim is generally not an element of probable cause to arrest. McBride v. Walla Walla, 95 Wn. App. 33 (Div. III, 1999) – October 99:16

SENTENCING (See also “Restitution”)

5-to-10-second wait sufficient on “knock and announce” issue; also, Miranda waiver implied, but deadly weapon sentence enhancement voided, because defendant was not armed with gun in book case nearby at time of arrest. State v. Johnson, 94 Wn. App. 882 (Div. I, 1999) – October 99:11

SIXTH AMENDMENT AND RELATED STATE LAW PROVISIONS (See also “Interrogations and Confessions”)

Hearsay testimony by police officer telling of confession by defendant’s cohort violated confrontation clause of Sixth Amendment. Lilly v. Virginia, 119 S.Ct. 887 (1999) – September 99:04

THEFT AND RELATED OFFENSES (Chapter 9A.56 RCW) (See also “Robbery”)

Driving or riding in car any distance knowing that driver lacks permission qualifies as “joyriding.” State v. Womble, 93 Wn. App. 599 (Div. I, 1999) – April 99:09

Passenger’s acquiring of knowledge, after getting in car, that the car is stolen can support “joyriding” conviction. State v. Phimmachak, 93 Wn. App. 11 (Div. I, 1998) – April 99:10

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

Vehicle Impound Ordinance Adopted In Seattle. Article. January 99:22

Trial court in “eluding” case should not have admitted trooper’s opinion testimony that driver was trying to get away. State v. Farr-Lenzini, 93 Wn. App. 453 (Div. II, 1999) – April 99:13

Vehicular homicide conviction upheld - a) technician drawing blood doesn’t need permit from toxicologist; and b) intoxication evidence sufficient. State v. Merritt, 91 Wn. App. 969 (Div. I, 1998) – April 99:18

Felony hit-and-run involving 1 collision with 1 vehicle is just 1 offense regardless of number of victimized occupants in struck vehicle, though the number of victims can affect sentencing. State v. Bourne, 90 Wn. App. 963 (Div. II, 1998) – April 99:18

“Felony eluding” statute (RCW 46.61.024) does not apply where pursuing police vehicle not marked on sides with identifying lettering or logo. State v. Ritts, 94 Wn. App. 784 (Div. III, 1999) – June 99:16

14-year-old’s lack of driver’s license insufficient, alone, to support charge under “disregard for safety”

variation of vehicular homicide statute. State v. Lopez, 93 Wn. App. 619 (Div. III, 1999) – June 99:17

DUI defendant waived corpus delicti challenge under Hamrick/Corbett rule by testifying at her DUI trial about her driving. State v. Liles-Heide, 94 Wn. App. 569 (Div. I, 1999) – June 99:19

Constitutionally, officer may testify to DUI defendant's refusal to perform FST's. City of Seattle v. Stalsbroten, 138 Wn.2d 227 (1999) – August 99:20

Crediford's implied DUI element explained. State v. Robbins, 138 Wn.2d 486 (1999) – November 99:06

UNIFORM CONTROLLED SUBSTANCES ACT (Chapter 69.50 RCW), OTHER DRUG LAWS

Medical Marijuana Initiative Takes Effect. Article. January 99:21

State gets conviction on only 1 count of "simple possession" of less than 40 grams where marijuana found in 2 places on the same day; ruling subject to reasonable time, place reading. State v. Adel, 136 Wn.2d 630 (1998) – February 99:08

Crack-under-the-hat evidence does not support "unwitting possession" instruction. State v. Buford, 93 Wn. App. 149 (Div. I, 1998) – March 99:14

Evidence supports conviction for "involving a minor in a drug transaction" where drug-dealer sold drugs while arm-in-arm with his minor girlfriend. State v. Reddick, 93 Wn. App. 804 (Div. I, 1999) – April 99:07

Real property forfeiture action dismissed because "arrest" warrant for the property not served. Bruett and Kalsbeek v. Real Property Known As 18328 11th Ave. N.E., Seattle, 93 Wn. App. 290 (Div. I, 1998) – April 99:13

Common law "necessity" defense rejected in manufacturing marijuana case. State v. Williams, 93 Wn. App. 340 (Div. II, 1998) – April 99:16

Drug dealer loses "I had no idea" challenge to sentence enhancement for sale within 1000 feet of a school bus stop, which bus stop also served as county transit stop. State v. Davis, 93 Wn. App. 648 (Div. II, 1999) – June 99:20

State wins on constructive possession, preservation-of-evidence issues. State v. Potts, 93 Wn. App. 82 (Div. III, 1998) – September 99:17

Mandate for suspending drivers' licenses of drug offenders aged 13-21 includes those 18-21 despite statutory reference to "juveniles". Davis v. DOL, 137 Wn.2d 957 (1999) – October 99:03

UNLAWFUL ISSUANCE OF BANK CHECKS

Knowingly paying debt with NSF check with intent to get brief reprieve from creditor's collection effort constitutes "unlawful issuance of bank check." State v. Alams, 93 Wn. App. 754 (Div. I, 1999) – June 99:18

VAGUENESS DOCTRINE

Word "profane" in Bellevue phone harassment ordinance not unconstitutional. Bellevue v. Lorang, 92 Wn. App. 186 (Div. I, 1998) – April 99:14 NOTE: this case is now under review in the Washington Supreme Court.

Tacoma noise ordinance restriction on car sound systems survives constitutional attack. Holland v. City of Tacoma, 90 Wn. App. 533 (Div. II, 1998) – April 99:15

"Intimidating a judge" statute upheld against constitutional attack. State v. Knowles, 91 Wn. App. 367 (Div. II, 1998) – April 99:18

Chicago's gang-loitering ordinance struck down for vagueness. City of Chicago v. Morales, 119 S.Ct. 1849 (1999) – August 99:14

WILDLIFE PROTECTION

Fish and Wildlife rule requiring fluorescent hunter orange upheld. Armstrong v. Department of Fish and Wildlife, 91 Wn. App. 530 (Div. II, 1998) – April 99:15

BRIEF NOTE FROM THE NINTH CIRCUIT OF THE U.S. COURT OF APPEALS

DRUG-DOG SNIFF OF STUDENTS DECLARED TO BE AN UNREASONABLE "SEARCH" – In B.C. v. Plumas (Cal.) Unified School District, ___ F.3d ___ (9th Cir. 1999) [1999 WL 958926], a 2-1 majority of the Ninth Circuit of the United States Court of Appeals rules in a civil suit that a school's use of a drug-sniffing dog to sniff individual students was a search. The majority holds further that the warrantless search was unreasonable, because the particular school was not shown to have emergent or wide-spread drug usage which would justify this intrusion.

The majority opinion explains that use of a drug-sniffing dog to sniff at inanimate object is not a “search” and therefore does not require justification. However, using a drug-dog to sniff people is a much more intrusive action, the majority declares, and requires special justification not present in this case.

But the court concludes that the individual defendants (school officials and sheriff’s department officers) were entitled to qualified immunity for the unreasonable search, because the law regarding use of drug-dogs was not “clearly established” at the time the search occurred. The Court of Appeals also notes that the plaintiffs had not appealed the lower court’s order dismissing the school district from the case. The lower court had ruled that, under the Eleventh Amendment, the school district was an entity which could not be sued in federal court.

Finally, the Court of Appeals holds on different grounds that the sheriff’s department should also be dismissed from the lawsuit. A municipality is liable in a civil rights action only if a custom or policy of the department is causally linked to the constitutional deprivation at issue. Here, the evidence was clear that the department’s policies and training limited random use of drug-sniffing dogs to inanimate objects. The department’s policies, therefore, could not be blamed for the officers’ unauthorized use of the dogs to sniff students.

Result: Affirmance of U.S. District Court dismissal of civil rights lawsuit of one of the students of Plumas School District.

LED EDITOR’S COMMENT: This decision is consistent with what we said about use of drug-detecting dogs in our comments on the Washington Court of Appeals decision in State v. Dearman, 92 Wn. App. 630 (Div. I, 1998) Nov 98 LED:06-09. There, we said the following:

Past Washington appellate court cases involving privacy issues in canine drug-sniffing search situations have involved dogs which sniffed inanimate objects in non-residential settings. Thus, in the only four cases reported prior to Dearman, the Washington courts have upheld warrantless police use of drug-sniffing dogs: to randomly check packages in a bus station express package area (State v. Wolohan, 23 Wn. App. 813 (Div. III, 1979) Nov. ’79 LED:05); to check out suspicions at a safety deposit box (State v. Boyce, 44 Wn. App. 724 (Div. I, 1986) Nov. ’86 LED:06); to check a suspicious package at the U.S. Post Office (State v. Stanphill, 53 Wn. App. 623 (Div. III, 1989) June ’89 LED:14); and to check out a suspicious package at Federal Express (State v. Gross, 57 Wn. App. 549 (Div. I, 1990) Aug. ’90 LED:13). However, several of these cases have warned that the courts might view use of drug-sniffing dogs differently were the dogs to be used to sniff at persons or at residences. Dearman does not suggest that there is anything wrong with the holdings in these four cases, all of which permitted warrantless searches of inanimate objects or non-residential premises. So Dearman does not restrict warrantless drug-dog sniffing [of inanimate objects or non-residential premises].

We think that the Dearman Court probably means that the] warrantless use of such specialized canines will be prohibited in two categorical situations: (1) in residential searches -- but only under the general circumstance where a search is not otherwise permitted under a warrant or under one of the recognized exceptions to the warrant requirement (i.e., a dog may be used to aid in a warrant search, consent search or search incident to arrest at a residence); and (2) in searches of persons -- but again only in circumstances where a search is not otherwise permitted under a warrant or under one of the recognized exceptions to the warrant requirement (i.e., a drug-sniffing dog may be used to aid in a search of a person on consent, incident to arrest, or under a warrant).

WASHINGTON STATE SUPREME COURT

STROUD’S “SEARCH INCIDENT” RULE FOR CARS REVISED AS TO ITEMS BELONGING TO NONARRESTEES; “BRIGHT LINE” GETS BLURRY AS COURT RESTRICTS SEARCH AUTHORITY AS TO NONARRESTEE PERSONAL EFFECTS

State v. Parker, State v. Jines, State v. Hunnel, ___ Wn.2d ___ (1999)

INTRODUCTORY NOTES FROM YOUR LED EDITOR: On November 4, 1999 the Washington Supreme Court issued a split decision reversing lower court decisions on “motor vehicle search incident to arrest” issues in three consolidated cases. While the decision was split, with a total of four opinions, the ultimate result of the decision is to impose new restrictions on police searches of personal effects belonging to nonarrestee vehicle occupants. The new Parker rule affects only the authority to search incident to arrest. The new rule thus does not impact the authority of officers to “frisk” vehicle occupants or the interior of a vehicle where officers can articulate objective justification for such “frisking.”

Each case involved a discovery of illegal drugs inside a nonarrestee vehicle occupant’s personal effects. In each case, the effects were located inside a motor vehicle at the time police searched the vehicle incident to an arrest of another occupant of the vehicle. The Court of Appeals decisions in two of the three cases—Parker and Hunnel—were previously digested in the January 98 and March 98 LED’s respectively. We will not provide a detailed accounting of the facts and lower court proceedings in the three cases, but we will instead focus on the legal analysis by the various members of the court. First, however, let us state what we now believe to be the Stroud/Parker rule for searches of motor vehicles incident to the arrest of one or more occupants of the vehicle:

During the process of making a custodial arrest of a vehicle occupant, including the time immediately subsequent to the suspect’s being arrested, handcuffed, and placed in a patrol car, officers have automatic authority to search the passenger compartment of the vehicle for weapons or destructible evidence.

This automatic authority to make a warrantless search does not extend to locked containers or locked compartments located in the passenger area. Nor, where the arrest is made of the driver or a passenger who is the registered owner of the vehicle, does the authority extend to those personal effects in the passenger area which officers know belong to a nonarrested vehicle passenger. [Note: As discussed below, defense attorneys will have some support for an argument that the authority also does not extend to those personal effects in the passenger area that officers should know belong to a nonarrested vehicle passenger.]

QUESTION WHICH REMAINS AFTER PARKER DECISION: The Parker decision does not give explicit guidance as to the rule where the arrestee is a passenger in the vehicle and is not the registered owner of the vehicle. Defense attorneys will have a strong argument that the Parker opinions favoring suppression there make an assumption that a driver (and, we presume, a passenger who is the registered owner of the vehicle) have control over the entire passenger area. This assumption may not hold for a passenger who is not the registered owner of the vehicle.

CHECK WITH YOUR PROSECUTOR AND/OR LEGAL ADVISOR ON ALL OF THE ABOVE.

SUMMARY OF FACTS: In each of the three cases, law enforcement officers made a lawful custodial arrest of the driver of a car which contained one of more other occupants. In each case, after everyone in the car had been directed to get out of the car, officers searched the passenger area of the car, as well as all containers and personal effects located in that area. [Note: In two of the cases, the officers had directed the disembarking nonarrestee(s) to leave their personal effects (purse or jacket) in the car, but that fact is irrelevant in light of the analysis by the Supreme Court.] In each case, an officer found illegal drugs in personal effects belonging to a nonarrestee passenger.

Each such nonarrestee passenger was charged with possession of the illegal drugs, and each moved to suppress the evidence on grounds that the search violated privacy rights under the Fourth Amendment and under article 1, section 7 of the Washington constitution.

SUMMARY OF PROCEEDINGS BELOW: In each case, the trial court held the search to be a lawful search “incident to the arrest” of another occupant of the vehicle, and the Court of Appeals ultimately affirmed the trial court ruling.

ANALYSIS BY SUPREME COURT --- FOUR OPINIONS WERE ISSUED, NONE OF WHICH GARNERED A MAJORITY OF FIVE JUSTICES

Plurality opinion by Justices Johnson, Smith, Madsen and Sanders – THEIR NONARRESTEE EFFECTS RULE: NO SEARCH INCIDENT IS PERMITTED AS TO NONARRESTEE PERSONAL EFFECTS WHERE OFFICERS “KNOW OR SHOULD KNOW” THE EFFECTS BELONG TO THE NONARRESTEE VEHICLE OCCUPANT

Justice Johnson authors an opinion signed by the above-named four justices. His opinion recognizes (expressly or impliedly) all of the following propositions. In State v. Stroud, 106 Wn.2d 144 (1986), the Washington Supreme Court adopted a “bright line” approach to “search incident to arrest” where arrests are made of occupants of motor vehicles. Stroud’s bright line rule permits officers to search the entire passenger area of the vehicle, as well as any unlocked containers in that area, following a lawful custodial arrest of a vehicle occupant. Under Stroud, it doesn’t matter that the arrestee has been handcuffed and placed in the back of a patrol car. So long as the search is reasonably contemporaneous with the arrest, and so long as the search does not go beyond the passenger area, the search is lawful. The purpose of a “search incident to arrest” under Stroud is to search for weapons as well as contraband and other evidence. The search authority is automatic, in that it is the fact of the custodial arrest, not the nature of the crime or other suspicions of the officer, that justifies the “search incident.”

Justice Johnson’s opinion does not cut back on any of these Stroud-based propositions. However, he concludes that the privacy rights of presumptively innocent, nonarrested occupants must be balanced against law enforcement needs. This leads him to state the following rule in an “independent grounds” interpretation of the Washington constitution: “the arrest of one or more vehicle occupants does not, without more, provide ‘authority of law’ under article 1, section 7 of our state constitution to search other, nonarrested vehicle passengers, including personal belongings clearly associated with such nonarrested individuals.” Under Justice Johnson’s test, police may “assume all containers within the vehicle may be validly searched, unless officers **know or should know** the container is a personal effect of a passenger who is not independently suspected of criminal activity and where there is no reason to believe contraband is concealed within the personal effects immediately prior to the search.”

Justice Johnson’s opinion goes on to conclude that the officers in each of the three consolidated cases knew that the personal effects they searched belonged to a nonarrestee occupant of the vehicle. Moreover, he notes that the officers did not articulate any “officer-safety” reasons which might have independently justified “frisking” the nonarrestee effects in question, and that, even if the officers had stated such officer-safety reasons, the searches went beyond the scope permitted for officer-safety searches. Accordingly, the Johnson opinion concludes that the searches were unlawful, and that the evidence must be suppressed in each case.

Concurrence/Dissent by Justice Alexander—HIS NONARRESTEE EFFECTS RULE: NO SEARCH INCIDENT IS PERMITTED AS TO NONARRESTEE PERSONAL EFFECTS WHERE OFFICERS “KNOW” EFFECTS BELONG TO NONARRESTEE

In an opinion not joined by any of the other justices, Justice Alexander agrees with the Johnson opinion’s articulation of the “search incident” rule in all points except for one. Justice Alexander does not agree with the “**should know**” part of the Johnson test. In Justice Alexander’s view, a “should know” test would produce legal hairsplitting which is unrealistic in light of the nature of police work. He argues for an actual knowledge test for excluding personal effects from the “search incident.” He concludes that officers should be able to search items left in the vehicle unless the officers **know** the

items belong to a non-arrested person. [Note that, unrelated to the debate over whether the standard protecting nonarrestee effects is “know” or “know or should know, ” Justice Alexander disagrees with suppression in one of the cases. In analysis which has no response in the majority opinion, Justice Alexander says he feels that the arrestee’s act, just prior to his arrest, of placing a bundle of money on top of the nonarrestee’s purse made that purse subject to the arrestee’s control, and hence subject to search.]

Justice Alexander’s “know” test for protecting nonarrestee effects (rather than Justice Johnson’s “know or should know” test) appears to set the new Parker “search incident” rule for nonarrestee personal effects, though that is open to debate. We reach the conclusion that Justice Alexander’s view controls because of the general rule for interpreting split-vote decisions of the Supreme Court. Where, as here, no single opinion is signed by a majority of Justices, the concurrence which states the narrowest ground for the result represents the holding of the Court. Arguably, Justice Alexander’s slightly narrowing view that otherwise concurs with Justice Johnson’s opinion meets this rule for interpreting split-vote decisions.

Justice Talmadge’s Concurrence—HIS NONARRESTEE EFFECTS RULE-- SEARCH ALL PERSONAL EFFECTS IN THE VEHICLE, BUT SEARCH THEM ONLY FOR WEAPONS, AND THEN EXTEND THIS RULE TO ALL “SEARCH INCIDENT” CIRCUMSTANCES

Justice Talmadge also writes a concurrence, which, like Justice Alexander’s concurrence, is joined by no other justice. In one sense, he would allow broader search authority than the Johnson and Alexander opinions. However, in another and much more significant sense, he would severely restrict the allowed intensity of the search. Justice Talmadge would allow officers to search all nonarrestee personal effects found in the vehicle. However, he proposes an across-the-board change for the general rule and rationale of “search incident.” He would limit the rationale for the search to safety only. Thus, while Justice Talmadge would, like all of the other justices, automatically permit search incident to arrest for every custodial arrest, regardless of individualized justification, or lack thereof, he would limit the officers to a search for weapons only. Hence, the scope of any search incident to arrest under his proposed rule would be limited to areas where a weapon might be found.

Justice Talmadge’s opinion did not get the support of any other justice. We believe that it is extremely unlikely that his suggested weapons-only limitation on “search incident” will ever become the law of Washington.

Dissent by Justices Guy and Pro Tem Judge Dolliver-- THEIR NONARRESTEE EFFECTS RULE—THE “BRIGHT LINE” NATURE OF THE STROUD TEST REQUIRES THAT THE COURT ALLOW SEARCH OF ALL PERSONAL EFFECTS IN THE VEHICLE

Justice Guy and judge pro tem Dolliver argue in vain that the other justices have erred in departing from the “bright line” approach of the Stroud rule. Justice Guy ‘s opinion would allow officers to search all effects found in the passenger area of a vehicle following the arrest of a vehicle occupant. Such a search would be for weapons and any destructible evidence. Of course, while Justice Guy’s opinion is the common sense view, and is likely the view that would prevail in most other jurisdictions, it is not the law of Washington.

LED EDITOR’S COMMENTS:

1. Check with your prosecutor

As always, we urge officers to check with their prosecutors. Any opinions expressed in this article by your LED Editor are personal opinions in an uncertain area of law.

2. “Know or should know” vs. “Know” question

We believe that some cases will turn on the question of whether the test for excluding personal effects is actual knowledge by the officer (Justice Alexander’s test) or is the “know or should know,” notice test of Justice Johnson. Justice Alexander’s “actual knowledge” test has a subjective component, while the “should know” part of Justice Johnson’s test (a “reasonable notice” test) apparently is an objective one. In our summary above regarding

Justice Alexander's concurring opinion, we explained why we think that, under the rules for interpreting split decisions of this sort, the test is actual knowledge, not one of reasonable notice. However, officers should be aware that it is possible that the Washington courts will adopt the "should know" test. While the Washington Supreme Court included a restrictive subjective component in its "pretext stop" ruling earlier this year in State v. Ladson, 138 Wn.2d 343 (1999), Sept. 99 LED:05, the Washington courts and courts in other jurisdictions generally disfavor subjective tests. Subjective search and seizure tests are usually rejected for the reasons we stated in the September 99 LED in our criticism of the Ladson ruling. Washington's lower courts trying to sort out the split opinions in Parker may have difficulty accepting an "actual knowledge" test which arguably encourages officers to know only what they want to know.

3. Justice Johnson apparently acknowledges a "reasonable suspicion" test for searching otherwise off-limits containers in some circumstances?

In our discussion above of Justice Johnson's opinion, we quoted a passage where he indicates that personal effects of nonarrestee occupants, which may be otherwise protected from search under the Parker rule, may nonetheless be subject to search for contraband "where there is ... reason to believe contraband is concealed within the personal effects immediately prior to the search." It appears that Justice Johnson meant to articulate a standard below "probable cause" for such a search. Until we get more guidance from the courts, we will assume the standard here to be "reasonable suspicion."

4. How does State v. Mendez limit search incident to arrest of a vehicle occupant?

Earlier this year, the Washington Supreme Court ruled in State v. Mendez, 137 Wn.2d 208 (1999) March 99 LED:04 that, in a stop of a vehicle "for a noncriminal traffic violation," a law enforcement officer has automatic authority to direct the driver, but not nonviolater passengers, to get out of or to stay inside the vehicle. Under Mendez, officers need a "heightened awareness of danger" (an articulable objective rationale based upon safety considerations) to justify directing passengers to stay in or get out of the vehicle, or to remain at the scene. According to Mendez, this "heightened awareness" need not arise to the justification for a "frisk." Factors to be considered in evaluating whether such "heightened awareness of danger" is present include, but are not limited to: " the number of officers, the number of vehicle occupants, the behavior of the occupants, the time of day, the location of the stop, traffic at the scene, affected citizens, [and] officer knowledge of the occupants."

In our view, the lawful custodial arrest of a vehicle occupant (whether the driver or a passenger) justifies an order under Mendez that everyone get out of the vehicle. An arrest of either the driver or a passenger (see State v. Cass, 62 Wn. App. 793 (Div. II, 1991) Nov. 92 LED:06) justifies a search incident of at least certain parts of the passenger area of the vehicle. It would border on insanity for officers to conduct such a search while any occupants of the vehicle remain inside. Also, in light of the custodial arrest of one of the vehicle occupants, it is reasonable to record witnesses to the incident; therefore, it would seem reasonable for the officer to request identification from the nonarrestee occupants. (Compare State v. Larson, 93 Wn.2d 638 (1980), which prohibits automatic or blanket requests for ID from passengers during routine traffic stops.) But those nonarrestee occupants would be free to decline the request for ID.

On the other hand, once the nonarrestee occupants of the vehicle have gotten out of the vehicle, the officers probably do not have automatic authority under Mendez to require those nonarrestee occupants to stay at the scene. [While one might argue that once a routine traffic stop turns into a custodial arrest situation, then Mendez cease to apply at all. However, we take the narrower view expressed here. We take this narrower view based in part on our discussions with a senior attorney in the New Jersey Attorney General's Office. Mendez drew its unusual "heightened awareness" standard from a line

of New Jersey court decisions.] Note that, under Mendez, if officers are able to articulate “heightened awareness of danger” as to certain of the disembarked nonarrestee occupants, then, per Mendez, the officers may order those particular persons to stay put. And if officers are able to articulate “frisk” justifications as to certain of the persons, then the officers may frisk those particular persons and their personal effects as well.

5. Thinking about different factual scenarios

It might be helpful for officers trying to analyze this case to think of three different categorical arrest situations. First, the most likely situation—custodial arrest of driver, who has one or more passengers who get out of the vehicle and leave a purse or other personal effects behind. If officers “know” that the personal effects belong to the nonarrestee passenger, perhaps because the passenger was clutching a purse or bag just before disembarking from the vehicle, or because the passenger volunteers something to that effect, then the effects are exempt from a search incident to arrest. Officers may still “frisk” the item should they be able to articulate an objective officer-safety basis for doing so. OFFICER SAFETY IS PARAMOUNT, OF COURSE, SO, WHEN YOU HAVE ANY ARTICULABLE REASON TO DO SO, LOOK FOR WEAPONS.

The second categorical situation is where officers make a custodial arrest of a passenger. Again as to nonarrestees in the vehicle, officers are not to search effects which they “know” belong to them, unless the officers can articulate officer-safety reasons for doing so. Defense attorneys will be able to make a strong argument that, where the passenger is not the registered owner of the vehicle, the officers should be deemed to “know” (or to come within the “should know” standard, if that is to be the standard) that the nonarrestees have a privacy interest in everything and all areas outside the “lunge area” surrounding the passenger’s seating area. Hence, defense attorneys will argue that police cannot search the vehicle or containers and compartments outside of the immediate area where the arrestee was located when the seizure began. However, we believe that a contrary argument can be made that the focus of the Supreme Court in Parker was on the special privacy interest of nonarrested persons in their PERSONAL EFFECTS, not on privacy interests that registered owners may have in the openly accessible areas of the vehicle. Officers should at least be able to search through the passenger compartment to see what is in “plain view,” even if they may not search all effects, containers, and compartments in the passenger area. AGAIN, WE RECOMMEND THAT OFFICERS CHECK WITH THEIR PROSECUTORS.

The third categorical situation is where the driver is the lone occupant of the vehicle. If the driver is a male, and there is a woman’s purse sitting in the back seat, is that purse open to search incident? We say “yes,” though again defense attorneys will no doubt make an argument to the contrary. We think such an argument would be weak one. We do not think that the Parker Court was concerned with possible privacy interests of persons who are not present at the scene of the arrest.

6. Thoughts about writing reports on post-Parker vehicle searches incident to arrest

As to all of these categorical situations where evidence is seized in a vehicle search incident to arrest, officers will want to consider trying to answer the following questions, in their reports:

How many persons were in the vehicle and where were they located: When the stop occurred? When the arrest was made? When the search occurred? Did the arrestee have and could the arrestee have had access to the unlocked container or personal effect?

Could the container or effect in which contraband or evidence was found have logically belonged to both the arrestee and a nonarrestee occupant (e.g., following arrest of woman driver, purse in car with at least one additional woman occupant)? Did the nonarrested person claim ownership of the container or personal effect?

Even where the officer knew that the personal effect or container belonged to a nonarrestee occupant, did the officer have articulable suspicion (perhaps based on observation of furtive gestures) that the personal effect contained evidence or contraband? [Note: See our Comment No. 3 above. Such articulable suspicion may be relevant in light of Justice Johnson's suggestion that an otherwise off-limits item may be subject to search "where there is ... reason to believe contraband is concealed within the personal effects immediately prior to the search."]

Did grounds exist to "frisk" the person, the item, or the area? If so, did the frisk stay within reasonable limits (i.e., assuming justification for a frisk, could the unlocked container or personal effect reasonably have contained a weapon)?

WASHINGTON STATE COURT OF APPEALS

TERRY STOP OF MAN URINATING IN PUBLIC OK'D; WARRANT CHECK OK'D AS WELL

State v. Villarreal, ___ Wn. App. ___ (Div. III, 1999) [984 P.2d 1064]

Facts and Proceedings: (Excerpted from Court of Appeals opinion)

The parties stipulated to the facts contained in a Yakima County deputy sheriff's incident report related to Mr. Villarreal that occurred about 10:00 p.m. one June evening in 1998. Deputy J.L. Aguilar saw Mr. Villarreal walk back and forth between two taverns, then urinate against a building. Deputy Aguilar approached Mr. Villarreal, then at 30 feet, and shined his flashlight at him. Mr. Villarreal turned toward the deputy exposing his penis. Then Mr. Villarreal began to walk away and zip up his pants. Deputy Aguilar identified himself and ordered Mr. Villarreal to freeze. Mr. Villarreal complied.

Deputy Aguilar asked for identification and requested a "wants" check while investigating the circumstances. The deputy saw a fresh puddle of urine and asked Mr. Villarreal why he did not use the tavern restrooms. Mr. Villarreal said he could not "hold it" any longer and admitted drinking four beers. Dispatch reported an outstanding warrant for Mr. Villarreal. Deputy Aguilar then arrested Mr. Villarreal pursuant to the warrant. During a search incident to the arrest, Deputy Aguilar discovered contraband including cocaine on Mr. Villarreal's person.

Mr. Villarreal was charged with possessing cocaine. He unsuccessfully moved to suppress the evidence. At the suppression hearing the parties relied on the deputy's incident report as the undisputed facts. The trial court took great care to enter findings of fact that Mr. Villarreal now largely disputes, together with all conclusions derived from the findings. Finding of Fact 3 states: "Urinating in public is more than a minor incident, it is one of the most serious health hazards facing society today." Finding of Fact 4 states: "The defendant's act of turning to face the Deputy, while the Defendant still had his penis exposed, raised the level of the incident." Finding of Fact 5 states: "Checking the Defendant for warrants was not overly intrusive because the existence of warrants is not an issue for legitimate expectation of privacy." Mr. Villarreal was found guilty after a trial on stipulated facts.

ISSUES AND RULINGS: 1) Was the Terry stop justified based on the officer's observation of defendant's act of urinating in public? (ANSWER: Yes, rules a 2-1 majority); 2) Did the officer exceed the permissible scope of a Terry seizure when the officer ran a warrant check during the stop? (ANSWER: No) Result: Affirmance of Yakima County Superior Court conviction of Ruben Villarreal, Jr. for possession of cocaine.

ANALYSIS BY MAJORITY: (Excerpted from majority opinion)

1) Justification for seizure

Here, the parties agree Mr. Villarreal was seized for this analysis when Deputy Aguilar told Mr. Villarreal to "freeze."

The parties' agreement is consistent with the principle that not every encounter between a law enforcement officer and a person constitutes a seizure. Rather, "[t]here is a 'seizure' when, in view of all the circumstances surrounding the incident, a reasonable person would have believed that he was not free to leave."

Mr. Villarreal focuses his argument on whether Deputy Aguilar had any legal basis under any ordinance or statute to believe Mr. Villarreal was committing a criminal act by urinating in public. "A seizure is reasonable if the State can point to 'specific and articulable facts giving rise to a reasonable suspicion that the person stopped is, or is about to be, engaged in criminal activity.'" In evaluating the reasonableness of a stop, courts consider the totality of the circumstances, including the officer's training and experience, the location of the stop and the conduct of the person detained. The inability of a police officer to articulate the exact crime being committed does not preclude an investigative stop. Rather, police officers are encouraged to investigate suspicious situations.

"When officers have a reasonable suspicion, they may stop the suspect, identify themselves and ask the person detained for identification and an explanation of his or her activities." After a lawful investigatory stop, an officer may temporarily detain a suspect pending the results of a police headquarters radio check.

Mr. Villarreal does not challenge the constitutionality of Harrah Town Ordinance No. 56 that provides in part:

Section 1: The following persons are hereby declared to be disorderly persons:

....

29. Any person who shall dispose any rubbish or garbage or other offensive or nauseous substances in any public place or upon any property not belonging to him within the Town of Harrah.

....

31. Any person who shall conduct himself in a vulgar, profane or obscene manner, or shall use in the presence of any person any vulgar, profane or indecent language.

....

Section 2: Any person found guilty of being a disorderly person shall be guilty of a misdemeanor....

Thus, Ordinance 56 prohibits the disposal of "offensive or nauseous substances" and "vulgar" conduct.

"Offensive" means, among other things: "2. unpleasant or disagreeable to the sense: an offensive odor." Random House Dictionary 1344 (2d ed. 1987). "Vulgar" means, among other things: "2. indecent; obscene; lewd 3. crude; coarse; unrefined." Random House, supra at 2133. Here, the plain meaning of the statute supports the finding that Deputy Aguilar had specific and articulable facts to believe Mr. Villarreal was violating the Harrah ordinance. Urinating in public may constitute either "vulgar" conduct, as being particularly coarse or crude, or the disposal of an "offensive" substance. Thus, both come within the ordinance's prohibition of disorderly conduct.

Here, Deputy Aguilar gave specific and articulable facts that provided a reasonable basis to continue his investigation of disorderly conduct. We conclude Deputy Aguilar's stop and identification inquiry were reasonable under these circumstances.

Additionally, after the suppression hearing, the State successfully moved to supplement the record with RCW 9.66.010 as a basis for the seizure. This statute partly provides: "A public nuisance is a crime against the order and economy of the state." RCW 9.66.010. It details certain persons, places, and activities that are

proscribed including "[e]very act unlawfully done and every omission to perform a duty, which act or omission (1)[s]hall annoy, injure or endanger the safety, health, comfort, or repose of any considerable number of persons; or ... (3)[s]hall ... defoul ... a public ... street, [or] alley ... [s]hall be a public nuisance." RCW 9.66.010.

Arguably subsections (1) and (3) apply here. First, the safety and health of the public at large is endangered by the improper disposal of human waste in a public place as described in these facts. Second, although the terminology is a bit antiquated, Mr. Villarreal "befouled" the place he urinated. The trial court found Deputy Aguilar detained Mr. Villarreal for urinating in public.

We note Deputy Aguilar's community caretaking function alternatively justified the initial encounter. This court has recently stated:

The police power is a fundamental purpose of government. It extends not only to the preservation of the public health, safety, and morals, but also to the preservation and promotion of the public welfare. This recognizes the community caretaking function of police officers and exists so they can assist citizens and protect property.

The trial court properly noted its concern for the health and public safety implications that may follow from the elimination of human waste in a public place. Common sense dictates that in a crowded and civilized society, a warning to desist because of the health implications is appropriate. Further, defacing or damaging private property is a proper concern for a law enforcement officer. It is appropriate for a law enforcement officer to contact a person suspected of urinating in public to address these concerns and take information that may be relevant to a property owner who may seek recovery for the defacement or damage that may be caused.

Next, we note the trial court correctly observed that after the officer decided to contact Mr. Villarreal, it was reasonable for the officer to report his location and circumstances to his dispatch for officer safety reasons. "[I]t was okay and reasonable for the officer to call in to the station saying, look, here I am. I'm in the alley. I've got a guy here. I stopped him for urinating. His name is so and so and I'm going to deal with it." The [Villarreal trial] court continued and explained the officer safety implications. "[I]t is ten o'clock at night. It's dark. It's in an alley. Shouldn't the officer be concerned about checking in and telling people what is going on?"

2) Warrant check during Terry stop

Mr. Villarreal also contends that, even if the seizure was reasonable, the trial court should have suppressed the seized contraband because the warrant check exceeded the scope of the investigatory stop. A warrant check during a valid criminal investigatory stop is a reasonable routine police procedure so long as the duration of the warrant check does not unreasonably extend an initially valid contact. We have decided the initial contact was valid. Nothing in the record indicates the deputy's call to dispatch unreasonably extended the duration of the stop. Moreover, the trial court reasoned correctly that an officer may call in his or her location and activity to enhance the officer's personal safety under the circumstances presented here.

[Some citations omitted]

DISSENT:

Judge Schultheis dissents, arguing that the officer could not have had reasonable suspicion that Villarreal was violating any of the statutes or ordinances cited by the majority. Judge Schultheis argues that none of these laws are directed at urinating in public. He also challenges the majority's "community caretaking" rationale.

LED EDITOR'S COMMENT: Judge Schultheis has a point on a close question of law. We believe cities and counties that want to prevent "urinating in public" should adopt ordinances expressly addressing that conduct. One example is the following prohibition on "urinating or defecating in public" which we found in a city ordinance provided to us by the Municipal Research Center in Seattle [phone: (206) 625-1300].

A) A person is guilty of urinating or defecating in public if he or she intentionally urinates or defecates in a public place other than a washroom or toilet room, or at a place and under circumstances where such act could be observed by any member of the public.

B) Urinating or defecating in public is a misdemeanor.

It may be useful to define "public" or "public place" in such an ordinance, as did the ordinance supplied to us by the Municipal Research Center.

**"INITIATION OF CONTACT RULES UNDER FIFTH AND SIXTH AMENDMENTS":
CORRECTION NOTICE REGARDING OUR ARTICLE**

We recently discovered a minor error in the above-referenced article which we have been using to teach Miranda issues to investigators since 1990. Under the U.S. Supreme Court's interpretation of Miranda in Edwards v. Arizona, 447 U.S. 903 (1981) and Arizona v. Roberson, 486 U.S. 675 (1988), police are barred from initiating contact with suspects to interrogate them as to "any crime" where the suspects have: (A) asserted the right to counsel, (B) remained in continuous custody since the assertion, and (C) not themselves initiated contact with police during that time.

For the past 10 years, our article has stated that the Edwards/Roberson bar to contact does not apply to "new crimes" that the suspect commits after asserting the counsel right but while remaining in continuous custody. We recently discovered that the case we had been citing for the past 10 years for this "new crimes" exception does not actually support the exception described. We have now qualifiedly changed our view as to a "new crimes" exception for the following three reasons: (1) we can find no case anywhere so holding; (2) the few law summaries we can find on point are to the contrary; and (3) the Roberson Court declared that the bar to contact applies to "any crime." We still think that this question is debatable. We thus hold out hope that a prosecutor could win the day on this "new crimes" question, at least where the continuous custody suspect was a post-conviction detainee. But in an abundance of caution, we suggest that, at least with pre-trial detainees, officers assume that there is not a "new crimes" exception to the Edwards/Roberson bar.

Please be aware that this area of law is complex, and that in this correction notice we are discussing just one of the many pieces of the "initiation of contact" puzzle. Readers wishing to obtain an updated (as of 11/10/99) copy of our comprehensive "initiation of contact" article may call, write or e-mail us at the phone number or addresses listed on the last page of this LED.

NEXT MONTH

Among the entries in the January 2000 LED will be: 1) State v. Wilson, No. 17572-3-III (Div. III, 1999) (where the Court of Appeals has held in an October 29, 1999 ruling that naked-eye observations by police-experts during an investigatory fly-over at an altitude of 500 feet: (A) added up to probable cause, and (B) did not violate the rural property owner's right to privacy under article 1, section 7 of the Washington State constitution); and 2) California Attorneys for Criminal Justice, et. al. v. Butts, et. al., 1999 WL 1005103 (where the 9th Circuit of the U.S. Court of Appeals ruled on November 8, 1999 that officers were subject to a civil rights lawsuit for intentionally violating Miranda by interrogating suspects after the suspects had requested counsel).

INTERNET ACCESS TO COURT DECISIONS, STATUTES, AND COURT RULES

The Washington office of the Administrator for the Courts maintains web sites with appellate court information, including recent court opinions by the Court of Appeals and State Supreme Court. One address provides just decisions which have been issued within the preceding 14 days [<http://www.wa.gov/courts/opinpage/recent.htm>]. Two other addresses provide more court information and also include decisions issued within the preceding 90 days [<http://www.wa.gov/courts/home/htm>] and [<http://www.wa.gov/courts/opinpage/home.htm>].

United States Supreme Court opinions can be accessed at [<http://supct.law.cornell.edu/supct>]. This web site contains all U.S. Supreme Court opinions issued since 1990 and most significant opinions of the Court issued before 1990.

A good source for easy access to relatively current Washington state agency administrative rules (including CJTC rules at Title 139 WAC, WSP equipment rules at Title 204 WAC and other WSP rules at Title 446 WAC) can be found at [<http://slc.leg.wa.gov/WACBYTitle.htm>]. Washington Legislation and other state government information can be accessed at [<http://access.wa.gov/>] clicking on "L" and then "legislation" or other topical entries in the "Access Washington" Home Page "Index."

The Law Enforcement Digest is edited by Senior Counsel, John Wasberg, Office of the Attorney General. Phone 206 464-6039; Fax 206 587-4290; Address 900 4th Avenue, Suite 2000, Seattle, WA 98164-1012; E Mail [johnw1@atg.wa.gov]. Editorial comment and analysis of statutes and court decisions express the thinking of the writer and do not necessarily reflect the opinion of the Office of the Attorney General or the Washington State Criminal Justice Training Commission. The LED is published as a research source only and does not purport to furnish legal advice. LED's from January 1992 forward are available on the Commission's Internet Home Page at:[<http://www.wa.gov/cjt>]. Also available on the CJTC Home Page are five-year cumulative subject matter indexes for 1989-1993 and for 1994-1998.