



Law Enforcement

December 2000

Digest

HONOR ROLL

512th Session, Basic Law Enforcement Academy – June 7th, 2000 through October 12th, 2000

President: Michael Torres - Tacoma Police Department
Best Overall: Devon F. Gabreluk - Federal Way Police Department
Best Academic: Devon F. Gabreluk - Federal Way Police Department
Best Firearms: Devon F. Gabreluk - Federal Way Police Department
Tac Officer: Sergeant Bob Cecil - Lacey Police Department

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2000 SUBJECT MATTER INDEX

LED EDITORIAL NOTE: This is our annual LED subject matter index. It covers all LED entries from January 2000 through December 2000. Since 1988 we have published a twelve-month index each December. In the past 22 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>.

ABATEMENT FOR DRUG NUISANCE

Tavern with drug problem loses appeal challenging drug nuisance abatement order. Bellingham v. Chin, d/b/a/ Danny's Tavern, 98 Wn. App. 60 (Div. I, 1999) - February 00:19

Application of drug abatement statute held to violate due process protections where bar owners not shown to have known of illegal activity on the premises as it was occurring. City of Seattle v. McCoy, 101 Wn. App. 815 (Div. I, 2000) - October 00:21

ADDRESS CONFIDENTIALITY

Article: Washington State's Address Confidentiality Program - April 00:02

ADA – AMERICANS WITH DISABILITIES ACT (Handicap Discrimination)

Physically restraining inmates is an essential function of a correctional officer's job; therefore, DOC allowed to reassign temporarily disabled correctional officer. Dedman v. Washington Personnel Appeals Board, 98 Wn. App. 471 (Div. II, 1999) - April 00:15

ARREST, STOP AND FRISK

Officer made seizure when he asked suspect whether suspect would mind sticking around while officer checked for arrest warrant. State v. Barnes, 96 Wn. App. 217 (Div. III, 1999) - January 00:13

Probable cause to arrest for DUI met by evidence of empty alcohol containers in car plus "booze" smell on arrestee. State v. Gillenwater, 96 Wn. App. 667 (Div. II, 1999) - February 00:08

Officer had PC to arrest for "physical control" where driver sleeping at the wheel with motor running in vehicle located 3 feet off the highway. State v. Reid, 98 Wn. App. 152 (Div. II, 1999) - February 00:11

"Reasonable suspicion": citizen's unprovoked headlong flight upon seeing police cars in area known for heavy narcotics trafficking justifies Terry seizure. Illinois v. Wardlow, 120 S.Ct. 673 (2000) - March 00:02

First amendment bars warrantless arrest of self-touching nude dancers. Furfaro v. City of Seattle, 97 Wn. App. 537 (Div. I, 1999) - March 00:15 Status: Review is pending in the State Supreme Court.

Oregon State Police officer with WSP commission but no CJTC certificate held not authorized to take action in Washington; but exclusion of evidence not required. State v. Barker, 98 Wn. App. 439 (Div. II, 1999) - April 00:08 Status: Review is pending in the State Supreme Court.

Anonymous phone call regarding young man in plaid shirt with gun fails to meet Terry's "reasonable suspicion" standard. Florida v. J.L., 120 S.Ct 1375 (2000) - May 00:07

At traffic stop, "heightened awareness of danger" per Mendez justified taking control of uncooperative vehicle passenger. City of Spokane v. Hays, 99 Wn. App. 653 (Div. III, 2000) - May 00:16

Running a "warrants check" while holding a coat and license of a claimant to "lost property" held to be unlawful seizure. State v. Burt, 99 Wn. App. 566 (Div. III, 2000) - May 00:20

No "seizure" occurred where officer took id just long enough to record the information, gave back the ID, and then conversed with man while checking warrants. State v. Hansen, 99 Wn. App. 575 (Div. I, 2000) - June 00:17

Several-hour detention was unlawful arrest without PC; consent was tainted; and inevitable discovery exception to exclusionary rule does not apply. State v. Avila-Avina, 99 Wn. App. 9 (Div. I, 2000) - August 00:07

Court clerk may not issue arrest warrant without judicial participation. State v. Walker, 101 Wn. App. 1 (Div. II, 2000) - August 00:14

Fourth Amendment "community caretaking function" does not justify seizure of young-looking teenager out on a school night with older, possibly drug-involved companions in downtown Seattle. State v. Kinzy, 141 Wn.2d 373 (2000) - September 00:07

Traffic stop held non-pretextual based on trial court fact-finding meeting Ladson's objective-subjective test; failure to cite for infraction not determinative. State v. Hoang, 101 Wn. App. 732 (Div. I, 2000) - November 00:08

Warrantless arrests for violation of Fish and Wildlife statutes and rules. Staats v. Brown, 139 Wn.2d 757 (2000) - December 00:21

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

BB gun fight is against public policy, so consent is no defense to assault charge. State v. Hiott, 97 Wn. App. 825 (Div. II, 1999) - February 00:09

Assault – where spouses are living separately, one spouse has no “community property” right to enter or remain in other’s apartment. Bellevue v. Jacke, 96 Wn. App. 209 (Div. I, 1999) - February 00:18

Proving recklessness in second degree assault prosecution: defendant should have been allowed to testify as to his subjective belief that his punch to the victim’s face would not cause substantial bodily harm. State v. R.H.S., 94 Wn. App. 844 (Div. I, 1999) - April 00:07

Knowledge of officer’s status is not element of Assault Three under RCW 9A.36.031(1)(g). State v. Brown, 140 Wn.2d 456 (2000) - August 00:06

Prison inmate’s homemade paper-and-pencil spear is not a deadly weapon for purposes of second degree assault charge. State v. Skenandore, 99 Wn. App. 494 (Div. II, 2000) - September 00:19

Self-defense standard for inmates using force against corrections officers is same as for civilians resisting police arrest: defendant can respond with force only if “actual, imminent danger of serious injury.” State v. Bradley, ___ Wn.2d, 10 P.3d 358 (2000) - December 00:14

BAIL FORFEITURE

Cash bail may not be forfeited to cover restitution. State v. Paul, 95 Wn. App. 775 (Div. III, 1999) - June 00:21

BAIL JUMPING (RCW 9A.76.170)

“Bail jumping” law applies to failure to show at probation hearing. State v. Pope, 100 Wn. App. 624 (Div. II, 2000) - July 00:20

BARRATRY

“Barratry” charge could not be pursued against pro se defendant who filed “pleading” papers on arresting officers in relation to pending proceedings on DWLS charge. State v. Duffey, 97 Wn. App. 33 (Div. II, 1999) - March 00:17 Status: Review is pending in the State Supreme Court.

BIGAMY

No bigamy conviction where state can’t prove all elements necessary to show validity of 1st Mexico marriage. State v. Rivera, 95 Wn. App. 961 (Div. III, 1999) - April 00:18

CIVIL LIABILITY (Including reverse lawsuits by officers)

Civil rights suit for Fifth Amendment violation allowed to proceed against officers who, per formal training and widespread practice in Southern California at the time, intentionally ignored custodial invocations of Miranda rights. California Attorneys for Criminal Justice, et. al. v. Butts, et. al., 195 F.3d 1039 (9th Cir. 1999) - January 00:03

Detective’s “promise” to submit case to prosecutor created special relationship; lawsuit allowed under exception to “public duty doctrine.” City of Anacortes v. Torres, 97 Wn. App. 64 (Div. I, 1999) - January 00:10

No liability for bank or police in check-cashing mixup and arrest. Dang v. Ehredt, Seattle P.D. and Others, 95 Wn. App. 670 (Div. I, 1999) - February 00:18

Jury in Fourth Amendment civil rights case must consider whether officers violated Payton rule, as well as whether officers should have washed pepper spray out of arrestee’s eyes. LaLonde v. County of Riverside, 204 F.3d 947 (9th Cir. 2000) - May 00:12

Pepper spray apparently may not be used to overcome merely passive resistance. Headwaters Forest Defense v. County of Humboldt, 211 F.3d 1121 (9th Cir. 2000) - July 00:03 Status: See further entry below, this topic.

“Public duty” doctrine does not bar cause of action by parents against law enforcement for negligent child abuse investigation. Rodriguez v. Perez, 99 Wn. App. 439 (Div. I, 2000) - July 00:06

No duty of care owed to child care worker for liability purposes when government investigating allegations that the worker committed child abuse. Pettis v. State, 98 Wn. App. 553 (Div. I, 1999) - July 00:07

Humboldt County Sheriff’s Department seeks further review in case involving use of pepper spray to unlink “passively” resisting protestors. Headwaters Forest Defense v. County of Humboldt, 211 F.3d 1121 (9th Cir. 2000) - August 00:05

Parent has cause of action against DSHS for negligent investigation; no-contact order does not break the chain of legal causation between DSHS’s alleged negligence and parent’s alleged injury. Tyner v. Department of Social and Health Services, 141 Wn.2d 68 (2000) - September 00:10

No legal basis for lawsuit based on police shooting of man who police shot after he pointed rifle at them and at his wife. Estate of Lee v. City of Spokane, 101 Wn. App. 158 (Div. III, 2000) - September 00:11

Article: Police officer recovers \$5191.05 in damages, costs and attorney fees for being erroneously named in federal court civil suit. - September 00:21

No constitutional violations in case relating to Wenatchee “sex ring” investigations. Devereaux v. Perez and others, 218 F.3d 1045 (9th Cir. 2000) - October 00:10

Pointing gun at suspect may be excessive force under Fourth Amendment – lawfulness of gun-pointing by law enforcement officer depends on nature and imminence of threat. Robinson v. Solano County, California, 218 F.3d 1030 (9th Cir. 2000) - October 00:10

Warrantless arrests for violation of Fish and Wildlife statutes and rules. Staats v. Brown, 139 Wn.2d 757 (2000) - December 00:21

COMMUNICATING WITH A MINOR FOR IMMORAL PURPOSES

Adult who asked 16-year-old niece to pose for nude pictures (before the two engaged in voluntary sex) was guilty of "communication with a minor for immoral purposes." State v. Pietrzak, 100 Wn. App. 291 (Div. III, 2000) - July 00:09

CORPUS DELICTI RULE

No corpus delicti rule in involuntary commitment, other civil proceedings. State v. M.R.C., 98 Wn. App. 52 (Div. II, 1999) - March 00:16

In “felony eluding” case, Court rules that corpus delicti for driving crimes does not always require proof of driver ID. State v. Flowers, 99 Wn. App. 57 (Div. II, 2000) - May 00:19

Corpus delicti of manslaughter not established in possible SIDS case. State v. Pineda, 99 Wn. App. 65 (Div. II, 2000) - May 00:20

CRIMINAL LIABILITY FOR POLICE CONDUCT

FBI marksman who shot Vicky Weaver at Ruby Ridge immune from state criminal prosecution -- he honestly and reasonably believed that deadly force was necessary. Idaho v. Horiuchi, 215 F.3d 986 (9th Cir. 2000) - October 00:11

DOMESTIC VIOLENCE

Note: Revisiting federal DV restraining order restrictions & guns. - June 00:10

Pre-trial no-contact order is invalid if it fails to inform the respondent that consent to a violation is not a defense. State v. Marking, 100 Wn. App. 506 (Div. II, 2000) - September 00:19

RCW 26.50 DV protection order's distance restraint provision criminally enforceable. State v. Chapman, 140 Wn.2d 436 (2000) - October 00:14

Knowledge that gun possession violates domestic violence restraining order is not an element of federal crime -- ignorance of the law is no excuse. U.S. v. Kafka, 222 F.3d 1129 (9th Cir. 2000) - November 00:02

DOUBLE JEOPARDY

Two convictions are justified for two marijuana grow operations. State v. Davis, 95 Wn. App. 917 (Div. I, 1999) February 00:16

DUE PROCESS

Delay in charging defendant, which delay in part led to loss of juvenile court jurisdiction, did not violate defendant's due process rights. State v. Brandt, 99 Wn. App. 184 (Div. II, 2000) - July 00:16

ELECTRONIC SURVEILLANCE

Application for electronic surveillance court order under RCW 9.73.090/130 fails to show other investigative procedures not workable. State v. Porter, 98 Wn. App. 631 (Div. III, 1999) - April 00:11

Inadvertent misstatement of start time on interrogation tape does not require suppression of recording or statements under chapter 9.73 RCW. State v. Demery, 100 Wn. App. 416 (Div. II, 2000) - July 00:08

Where Tacoma police supervisor authorized section 230 intercept and recording under chapter 9.73, it was lawful for authorized officers in Tacoma to intercept and record call that suspect placed from Sumner to Tacoma. State v. Matthews, ___ Wn. App. ___, 5 P.3d 1273 (Div. II, 2000) - October 00:18

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

"Failure to return from furlough," not "escape," was proper charge. State v. Dorn, 93 Wn. App. 538 (Div. II, 1999) - March 00:12

EVIDENCE LAW

Hearsay exception for statements made for "medical diagnosis or treatment" [ER 902(a)(4)] does not apply to statements to "forensic" interviewer; but testimony held admissible under child abuse hearsay statute [RCW 9A.44.120]. State v. Lopez, 95 Wn. App. 842 (Div. III, 1999) - January 00:15

"Excited utterances" hearsay exception applied in case where, at trial, alleged victim tried to retract the statement she had made at time of assault. State v. Briscoeray, 95 Wn. App. 167 (Div. I, 1999) - January 00:17

"Prior bad acts" admissible in harassment case to show victim's fear reasonable. State v. Ragin, 94 Wn. App. 407 (Div. I, 1999) - February 00:15

Status privilege against spousal testimony under RCW 5.60.060(1): lack of marriage license does not invalidate a marriage. State v. Denton, 97 Wn. App. 267 (Div. I, 1999) - February 00:22

9-year-old child molestation victim who said she would refuse to testify held "unavailable" though trial court had not ordered her to testify. State v. Hirschfield, 99 Wn. App. 1 (Div. I, 1999) - March 00:15

DRE evidence admissible under "Frye" and ER 702 tests. State v. Baity, 140 Wn.2d 19 (2000) - April 00:05

Evidence of dissociative identity disorder, also known as multiple personality disorder, satisfies "Frye test" for scientific evidence, but not ER 702 re expert opinions. State v. Greene, 139 Wn.2d 64 (1999) - April 00:05

Latent earprint evidence does not satisfy “Frye test” for scientific evidence. State v. Kunze, 97 Wn. App. 832 (Div. II, 1999) - April 00:12

Pattern of “truth-or-dare” sex games justifies admission of evidence of defendant’s prior bad acts in child molestation prosecution. State v. Griswold, 98 Wn. App. 817 (Div. III, 2000) - July 00:17

“Witness tampering” is “crime of dishonesty” for impeachment purposes. State v. Bankston, 99 Wn. App. 266 (Div. III, 2000) - July 00:20

Hearsay qualifies as “excited utterances” despite post-event passage of time and despite post-event questioning by the police. State v. Williamson, 100 Wn. App. 248 (Div. III, 2000) - September 00:17

No surveillance-post privilege is available to state where eyewitness testimony of hidden police observer is the state’s only evidence of drug sale by defendant. State v. Reed, 101 Wn. App. 704 (Div. I, 2000) - October 00:18

EXCLUSIONARY RULE (Including “inevitable discovery” exception)

Inevitable discovery rule given narrow interpretation. State v. Reyes, 98 Wn. App. 923 (Div. II, 2000) - April 00:12

No exclusion of evidence for evidence seized in search following arrest of person who assaulted officers who, in turn, were unlawfully arresting him. State v. Cormier, 100 Wn. App. 457 (Div. III, 2000) - July 00:19

Several-hour detention was unlawful arrest without PC; consent was tainted; inevitable discovery exception to exclusionary rule does not apply. State v. Avila-Avina, 99 Wn. App. 9 (Div. I, 2000) - August 00:07 Status: On review in Washington Supreme Court.

EX POST FACTO PROHIBITION

No ex post facto problem with 1994 amendments to chapter 9.41 RCW making rifles and shotguns off limits to felons. State v. Schmidt, 100 Wn. App. 297 (Div. II, 2000) - July 00:16

FIREARMS LAWS (Chapter 9.41 RCW) AND OTHER WEAPONS LAWS

Gun parts that are ready for rapid reassembly and firing are covered by RCW 9.41.040. State v. Padilla, 95 Wn. App. 531 (Div. I, 1999) - January 00:18

BB gun was “deadly weapon” for purposes of RCW 9A.36.021(1)(c). State v. Taylor, 97 Wn. App. 123 (Div. III, 1999) - January 00:20

Defendants in cases in two divisions of the Court of Appeals lose arguments that their firearms rights were automatically restored on parole release. Forster v. Pierce County, 99 Wn. App. 168 (Div. II, 2000) and State v. Radan, 98 Wn. App. 652 (Div. III, 1999) - March 00:13 Status: The Forster decision is final, but the Radan case is pending in the State Supreme Court.

Jury cannot reach portion of verdict addressing “armed with a deadly weapon” unless court allows defendant to argue he did not know of presence of gun. State v. Woolfolk, 95 Wn. App. 541 (Div. I, 1999) - April 00:18

Note: Revisiting federal DV restraining order restrictions & guns - June 00:10

Allowing the judiciary to determine the areas of courthouse in which weapons are prohibited is not an unconstitutional delegation. State v. Wadsworth, 139 Wn.2d 724 (2000) - June 00:16

Felon who left gun in car for three days “used” car to commit felony possession of gun; the same goes for illegal drugs in car; hence, his driver’s license must be revoked. State v. Batten, 140 Wn.2d 362 (2000) - July 00:04

No ex post facto problem with 1994 amendments to chapter 9.41 RCW making rifles and shotguns off limits to felons. State v. Schmidt, 100 Wn. App. 297 (Div. II, 2000) - July 00:16

“Dagger” is not an unconstitutionally vague term. State v. Leatherman, 100 Wn. App. 318 (2000) - August 00:19

Note: Under RCW 9.41.050(2), a CPL holder who is presently inside a vehicle may have a loaded pistol anywhere in the vehicle - August 00:20

Knowledge of presence of gun is element of crime of unlawful possession of firearm. State v. Anderson, 141 Wn. 2d 357 (2000) - October 00:13

Knowledge that gun possession violates domestic violence restraining order is not an element of federal crime -- ignorance of the law is no excuse. U.S. v. Kafka, 222 F.3d 1129 (9th Cir. 2000) - November 00:02

FIREWORKS AND EXPLOSIVES LAW

Only "fireworks" per fireworks law come within exemption to Explosives Act; officer's "innocent mistake" in failing to note suspect's unlicensed status in affidavit does not render search warrant invalid. In re Personal Restraints of Yim and Samphao, State v. Yokley, 139 Wn.2d 581 (1999) - March 00:06

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

Pepper spray apparently may not be used to overcome merely passive resistance. Headwaters Forest Defense v. County of Humboldt, 211 F.3d 1121 (9th Cir. 2000) - July 00:03 Status: Reconsideration motion is pending in Ninth Circuit.

FBI marksman who shot Vicky Weaver at Ruby Ridge immune from state criminal prosecution -- he honestly and reasonably believed that deadly force was necessary. Idaho v. Horiuchi, 215 F.3d 986 (9th Cir. 2000) - October 00:11

FORFEITURE LAW

In forfeiture matter under RCW 69.50.505, county's "notice of seizure" alone doesn't freeze bank account. Snohomish County v. City Bank, 100 Wn. App. 35 (Div. I, 2000) - July 00:12

FORGERY

Postdated check supports forgery conviction. State v. Young, 97 Wn. App. 235 (Div. I, 1999) - March 00:19

FREEDOM OF SPEECH (Also see "Pornography/Obscenity" topic)

First Amendment bars warrantless arrest of self-touching nude dancers. Furfaro v. City of Seattle, 97 Wn. App. 537 (Div. I, 1999) - March 00:15 Status: Review is pending in the State Supreme Court.

Law restricting sale of addresses of arrested individuals does not violate 1st Amendment. Los Angeles Police Department v. United Reporting Publishing Corp., 120 S. Ct. 483 (1999) - April 00:3

Word "profane" in Bellevue telephone harassment ordinance held unconstitutional. Bellevue v. Lorang, 140 Wn.2d 19 (2000) - April 00:07

Challenge to adult entertainment law is not Deja Vu; instead, it is frivolous. Deja-Vu-Everett-Federal Way, Inc. v. City of Federal Way, 96 Wn. App. 255 (Div. I, 1999) - June 00:19

HARASSMENT

Man restrained by antiharassment order was properly prosecuted when he sent "small claims court" demand letter to respondent. Seattle v. Megrey, 93 Wn. App. 391 (Div. I, 1998) - February 00:07

"Prior bad acts" admissible in harassment case to show victim's fear reasonable. State v. Ragin, 94 Wn. App. 407 (Div. I, 1999) - February 00:15

Word "profane" in Bellevue telephone harassment ordinance held unconstitutional. Bellevue v. Lorang, 140 Wn.2d 19 - April 00:07

Intent element of "telephone harassment" is not restricted to intent formed prior to or at time of placing call -- if proscribed intent develops during phone conversation, the statutory "intent" element is met. City of Redmond v. Burkhardt, 99 Wn. App. 21 (Div. I, 2000) - June 00:18

Fourth prong of harassment statute is not vague or overbroad. State v. Williams, 98 Wn. App. 765 (Div. I, 2000) - July 00:13 Status: Review is pending in the State Supreme Court.

Mental state element of harassment statute at chapter 9A.46 RCW gets pro-state interpretation in middle school indirect threats case. State v. J.M., 101 Wn. App. 706 (Div. I, 2000) - November 00:14

IMPLIED CONSENT, BREATH, AND BLOOD TESTS FOR ALCOHOL CONTENT

Law enforcement improves in administrative DUI hearings - April 00:19

INITIATIVE-GATHERING RIGHTS

Note: Washington's Secretary of State offers guidance regarding initiative signature-gathering on public, private property - August 00:21

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

Civil rights suit for Fifth Amendment violation allowed to proceed against officers who, per formal training and widespread practice in Southern California at the time, intentionally ignored custodial invocations of **Miranda rights**. California Attorneys for Criminal Justice, et. al. v. Butts, et. al., 1999 WL 1005103 (9th Cir. 1999) - January 00:03

CPS investigator working dependency case was a state agent and was therefore required to **Mirandize** jailed child abuse suspect. State v. Nason, 96 Wn. App. 686 (Div. III, 1999) - January 00:14

Arrestee's equivocal statement to interrogator that he "might" want to talk to an attorney did not invoke **Miranda rights**. State v. Aronhalt, 99 Wn. App. 302 (Div. III, 2000) - May 00:14

Inadvertent misstatement of start time on interrogation tape does not require suppression of recording or statements under chapter 9.73 RCW. State v. Demery, 100 Wn. App. 416 (Div. II, 2000) - July 00:08

No change in **Miranda** rule – U.S. Supreme Court rejects 1968 federal statute which attempted to overturn **Miranda**. Dickerson v. U.S., 120 S.Ct. 2326 (2000) - August 00:02

"Invocation" trigger to Sixth Amendment's bar to police "initiation of contact" with charged defendant is expanded to include pre-indictment attorney-representation. U.S. v. Harrison, 213 F.3d 1206 (9th Cir. 2000) - October 00:02

Edwards v. Arizona's Fifth Amendment "initiation of contact" bar is lifted as soon as suspect is meaningfully released from continuous custody. State v. Jones, ___ Wn. App. ___, 6 P.3d 58 (Div. II, 2000) - October 00:16

INTOXICATION DEFENSE

Voluntary intoxication defense to trespass and assault rejected on facts. State v. Finley, 97 Wn. App. 129 (Div. III, 1999) - March 00:17

JUVENILE LAW

Still no right to jury trial in juvenile offender adjudications. State v. J.H., 96 Wn. App. 167 (Div. I, 1999) - June 00:20

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

Kidnap conviction overturned: insufficient evidence of 93-year-old's incompetence. State v. Simms, 95 Wn. App. 910 (Div. II, 1999) - February 00:15

"Knowingly" mental state of "unlawful imprisonment" statute modifies phrase "without legal authority" – hence, ignorance of the law is an excuse to this charge. State v. Warfield, ___ Wn. App. ___, 5 P.3d 1280 (Div. II, 2000) - November 00:20

KNOWINGLY MAKING FALSE STATEMENT IN OFFICIAL REPORT (RCW 40.16.030)

Knowingly making false statement in official report filed with Health Department regarding sewage system is felony violation of RCW 40.16.030. State v. Hampton, 100 Wn. App. 152 (Div. II, 2000) - August 00:09 Status: Review is pending in the State Supreme Court.

LABOR LAW (Collective Bargaining Agreement vs. Civil Service Law)

Collective bargaining agreement prevails over civil service rule where two conflict. City of Spokane & Spokane Police Guild v. Spokane Civil Service Comm'n, 98 Wn. App. 574 (Div. III, 1999) - April 00:14

LEGISLATIVE DELEGATION

"Persistent prison misbehavior" law unconstitutional delegation by Legislature. State v. Brown, 95 Wn. App. 952 (Div. III, 1999) - June 00:21

LEGISLATIVE UPDATE 2000

Legislative Update -- Part One May 00:02

Legislative Update -- Part Two - June 00:02

Index To Legislative Update -- Parts One And Two - June 00:10

LIMITATIONS PERIOD

No conviction on lesser-included offense where limitations period had run on that lesser offense. State v. N.S., 98 Wn. App. 910 (Div. I, 2000) - June 00:21

Statute of limitations was tolled for prosecuting lawyer-thief who moved to New York; constitutional challenge to tolling provision of RCW 9A.04.080 rejected. State v. McDonald, 100 Wn. App. 828 (Div. I, 2000) - July 00:19

LIQUOR CONTROL

Liquor board's revocation of bar's license set aside for lack of sufficient evidence that licensee knowingly permitted illegal activity on the premises. Oscar's, Inc. v. Washington State Liquor Control Board, 101 Wn. App. 498 (Div. I, 2000) - October 00:21

MURDER AND MANSLAUGHTER

Pro-state causation ruling in murder case precludes stabber from arguing that victim's post-stabbing illegal drug-use and failure to timely seek medical care caused his death. State v. Perez-Cervantes, 141 Wn.2d 468 (2000) - November 00:03

PORNOGRAPHY/OBSCENITY

Child porn law does not require proof defendant knew age of person depicted. State v. Rosul, 95 Wn. App. 175 (Div. I, 1999) - January 00:19

Federal law against "virtual child porn" held unconstitutional. Free Speech Coalition v. Reno, 198 F.3d 1083 (9th Cir. 1999) - April 00:04

POSSE COMITATUS ACT

"Posse Comitatus Act" held to bar use of Navy personnel in support of state and local enforcement; Ninth Circuit decision appears to conflict with Washington precedent. U.S. v. Chae Won Chon, 210 F.3d 990 (9th Cir. 2000) - July 00:03

PUBLIC RECORDS, ACCESS TO COURT RECORDS AND PROCEEDINGS

Police incident reports are subject to Public Disclosure Act after case referred to prosecutor; but jail booking photos protected under jail records law. Cowles Publishing Company v. Spokane Police Department, 139 Wn.2d 472 (1999) - January 00:06

Plea agreement to expunge record of 4th degree assault conviction must be honored despite lack of statutory authority for expungement. State v. Shineman, 94 Wn. App. 57 (Div. II, 1999) - January 00:19

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

Adult who asked his 16-year-old niece to pose for nude pictures (before the two engaged in voluntary sex) was guilty of "communication with a minor for immoral purposes." State v. Pietrzak, 100 Wn. App. 291 (Div. III, 2000) - July 00:09

Teacher-coach in sexual relationship with student "abused a supervisory position" through indirect promises, and thus was guilty of "sexual misconduct with a minor." State v. Fiser, 99 Wn. App. 714 (Div. III, 2000) - July 00:10

Young child's touching of father's penis resulting in father's sexual gratification qualifies as "sexual contact" under RCW 9A.44.010(2), and hence was "child molestation" even if father did not direct child to do the touching. State v. Gary J.E., 99 Wn. App. 258 (Div. III, 2000) - July 00:11

Pattern of "truth-or-dare" sex games justifies admission of evidence of defendant's prior bad acts in child molestation prosecution. State v. Griswold, 98 Wn. App. 817 (Div. III, 2000) - July 00:17

RESTITUTION

Duty to pay restitution to victim may become duty to pay restitution to victim's estate after the victim's death. State v. Edelman, 97 Wn. App. 161 (Div. I, 1999) - February 00:22

Cash bail may not be forfeited to cover restitution. State v. Paul, 95 Wn. App. 775 (Div. III, 1999) - June 00:21

Restitution amount may include employer's costs of investigating embezzler. State v. Wilson, 100 Wn. App. 44 (Div. III, 2000) - July 00:13

Restitution from thieving attorney may include attorney fees incurred by victim pursuing a malpractice suit against the attorney. State v. Christensen, 100 Wn. App. 534 (Div. I, 2000) - August 00:11

ROBBERY (Chapter 9A.56 RCW)

Pro-state interpretation given to first degree robbery statute's phrase "displays what appears to be a firearm"-- victim need not see the object referred to by defendant. State v. Kennard, 101 Wn. App. 533 (Div. I, 2000) - October 00:20

SEARCH AND SEIZURE

Community Caretaking Function Exception

Fourth Amendment "community caretaking function" does not justify seizure of young-looking teenager out on a school night with older, possibly drug-involved companions in downtown Seattle. State v. Kinzy, 141 Wn.2d 373 (2000) - September 00:07

Consent Search Exception

No exclusion of evidence for evidence seized in search following arrest of person who assaulted officers who, in turn, were unlawfully arresting him. State v. Cormier, 100 Wn. App. 457 (Div. III, 2000) - October 00:05

No standing under Steagald for day-visitor to challenge police entry of host's home; in any event, consent ok because request was not subject to Ferrier where officers were asking host for permission to enter and look for visitor wanted on arrest warrant. State v. Williams (Harlan M.), ___Wn.2d ___, (2000) 2000 WL 1535891 - December 00:14

Crime Scene Search/Death Scene Search

No "crime scene" exception to warrant requirement. Flippo v. West Virginia, 120 S.Ct. 7 (1999) - January 00:03

Exigent Circumstances (And Emergencies)

No “standing” for visitor who was violating DV “no contact” order; furthermore, residential entry by police to arrest houseguest justified by exigent circumstances. State v. Jacobs, 101 Wn. App. 80 (Div. II, 2000) - November 00:15

Entry to Arrest

In Fourth Amendment civil rights lawsuit, jury must consider whether officers violated Payton rule, as well as whether officers should have washed pepper spray out of arrestee’s eyes. LaLonde v. County of Riverside, 204 F.3d 947 (9th Cir. 2000) - May 00:12

No standing under Steagald for day-visitor to challenge police entry of host’s home; in any event, consent ok because request was not subject to Ferrier where officers were asking host for permission to enter and look for visitor wanted on arrest warrant. State v. Williams (Harlan M.), ___Wn.2d ___ (2000) 2000 WL 1535891 - December 00:14

Incident To Arrest Exception (Vehicle)

Warrant made 300 feet away from vehicle recently occupied by arrestee did not justify “search incident” of vehicle under Stroud rule. State v. Porter, ___Wn. App. ___, 6 P.3d 1245 (Div. II, 2000) - November 00:05

Privacy Expectations, Scope of Constitutional Protection

Naked-eye observations from plane at 500 feet: a) conform to state constitution and b) provide probable cause regarding marijuana grow. State v. Wilson, 97 Wn. App. 578 (Div. III, 1999) - January 00:07

Unfenced, unposted orchard in wooded area on remote island protected from warrantless search under article 1, section 7 of Washington constitution. State v. Thorson, 98 Wn. App. 528 (Div. I, 1999) - February 00:02

Officer’s manipulation of soft bag was “search” without justification. Bond v. U.S., 120 C. St. 1462 (2000) - June 00:12

Open view: looking through preexisting hole in storage unit wall into neighboring storage unit was not a “search.” State v. Bobic, 140 Wn.2d 250 (2000) - June 00:14

9th Circuit splits from 10th circuit and maybe Washington courts in giving privacy protection to tent of camper squatting on federal land. U. S. v. Sandoval, 200 F.3d 659 (9th Cir. 2000) - August 00:03

State high court makes restrictive reading of Fourth Amendment to hold that late-night hour and lack of “legitimate (police) business” justification invalidates police entry into otherwise impliedly open curtilage at residence. State v. Ross, 141 Wn. 2d 304 (2000) - September 00:02

No Fourth Amendment privacy in motel registration records; no Ferrier application in federal court to consent search request; consent held to be voluntary. U.S. v. Cormier, 220 F.3d 1103 (9th Cir. 2000) - October 00:05

Probable Cause

Affidavit re defendant’s marijuana-smoking in his cabin doesn’t provide probable cause to search user’s shed; “boilerplate” affidavit criticized. State v. Klinger, 96 Wn. App. 619 (Div. II, 1999) - January 00:12

Affidavit describing “citizen” informant’s observation of marijuana grow survives challenge re “reliability” prong of probable cause test. State v. Bauer, 98 Wn. App. 890 (Div. II, 2000) - March 00:08

Follow-up LED editorial notes re Bauer decision: citizen information source (a) as presumptively credible confidential source for probable cause purposes; or (b) as reliable source for purposes of establishing reasonable suspicion to justify a “stop” - April 00:20

Standing

No “standing” for visitor who was violating DV “no contact” order; furthermore, residential entry by police to arrest houseguest justified by exigent circumstances. State v. Jacobs, 101 Wn. App. 80 (Div. II, 2000) - November 00:15

No standing under Steagald for day-visitor to challenge police entry of host’s home; in any event, consent ok because request was not subject to Ferrier where officers were asking host for permission to enter and look for visitor wanted on arrest warrant. State v. Williams (Harlan M.), ___Wn.2d ___ (2000) 2000 WL 1535891 - December 00:14

SELF DEFENSE/DEFENSE OF OTHERS

Fifteen-year-old’s claim of self defense against father’s assault held justified. State v. Graves, 97 Wn. App. 55 (Div. I, 1999) - February 00:21

SENTENCING (See also "Restitution")

"Two-strikes" sentencing law is not unconstitutionally "cruel." State v. Morin, 100 Wn. App. 25 (Div. I, 2000) - July 00:15

No-contact order is “requirement of sentence” barring discharge certificate. State v. Miniken, 100 Wn. App. 925 (Div. I, 2000) - August 00:18

SEX OFFENDER REGISTRATION

Substantial compliance is no defense to failing to register as a sex offender. State v. Vanderpool, 99 Wn. App. 709 (Div. III, 2000) - December 00:23

SEX PREDATORS

Imprisoned sex offenders can be committed for treatment as sex predators without proof that they committed an “overt act” during imprisonment. State v. Henrickson, 140 Wn.2d 686 (2000) - July 00:06

SIXTH AMENDMENT AND RIGHT TO COUNSEL

No violation of right to counsel where criminal defense attorney’s investigator also acted as paid informant for law enforcement on unrelated matter. State v. Hunter, 100 Wn. App. 198 (Div. I, 2000) - August 00:18

“Invocation” trigger to Sixth Amendment’s bar to police “initiation of contact” with charged defendant is expanded to include pre-indictment attorney-representation. U.S. v. Harrison, 213 F.3d 1206 (9th Cir. 2000) - October 00:02

SPEEDY TRIAL/ SPEEDY ARRAIGNMENT

No relief under Striker/Greenwood-speedy-trial-speedy-arraignment rule for defendant who had been in jail out of state and had resisted extradition. State v. Roman, 94 Wn. App. 211 (Div. II, 1999) - February 00:19

Under Striker-speedy-trial-speedy-arraignment rule, all crimes arising from same episode have same time lines unless state satisfies good faith, due diligence exception in relation to delay in charging based on delayed receipt of lab report. State v. Ross, 98 Wn. App. 1 (Div. II, 1999) - February 00:20. Opinion amended; see 981 P.2d 888 (Div. II, 1999)

Striker/Greenwood “speedy trial/speedy arraignment” rule requires dismissal of charges where no effort to contact defendant at address listed on arrest warrant. State v. Jones, 100 Wn. App. 820 (Div. II, 2000) - July 00:18

If citation not issued, neither release agreement nor bail agreement starts speedy trial clock. State v. Johnson, 100 Wn. App. 917 (Div. I, 2000) - August 00:15

Striker/Greenwood speed trial/speedy arraignment rule violated where arrest warrant not timely entered in state computer system. State v. King, 101 Wn. App. 318 (Div. II, 2000) - September 00:15

Striker/Greenwood speedy trial/speedy arraignment rule violated where one county did not do enough to try to arraign defendant who was in another county’s jail. State v. Huffmeyer, ___ Wn. App. ___, 5 P.3d 1289 (Div. II, 2000) - November 00:19

STANDING

See “Search and Seizure” - “Standing”

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

Crime of possession of stolen access devices does not require proof stolen credit cards still operational at time of arrest. State v. Schloredt, 97 Wn. App. 789 (Div. I, 1999) - March 00:18

TRAFFIC (Title 46 RCW) (See also "Implied Consent")

Bicyclist using crosswalk treated as pedestrian under RCW 46.61.235. Pudmaroff v. Allen, 138 Wn.2d 55 (1999) - January 00:05 **Note:** The 2000 Washington Legislature amended the traffic code to clarify the status of bicyclists. See June 2000 **LED**:04

Officer had PC to arrest for "physical control" where driver sleeping at the wheel with motor running in vehicle located 3 feet off the highway. State v. Reid, 98 Wn. App. 152 (Div. II, 1999) - February 00:11

"Hit-and-run-attended" conviction supported by record. City of Spokane v. Carlson, 96 Wn. App. 279 (Div. III, 1999) - February 00:14

Running over a dead body and leaving the scene is not felony hit-and-run. State v. Wagner, 97 Wn. App. 344 (Div. II, 1999) - March 00:16

Seattle's pedestrian interference law not in conflict with state law on jaywalking. State v. Greene, 97 Wn. App. 473 (Div. I, 1999) - April 00:15

Police bicycle can be "police vehicle" under "felony eluding" statute at RCW 46.61.024. State v. Refuerzo, ___ Wn. App. ___, 7 P.3d 847 (Div. I, 2000) - November 00:11

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

Prior drug-dealing conviction not admissible to prove intent to deliver; defendant's possession of 9 rocks of coke, plus evidence of his flight and his prior claims of "no drug usage" don't prove intent to deliver. State v. Wade, 98 Wn. App. 328 (Div. II, 1999) - February 00:12

Two convictions are justified for two marijuana grow operations. State v. Davis, 95 Wn. App. 917 (Div. I, 1999) February 00:16

Evidence of "intent to deliver" drugs held sufficient. State v. McNeal, 98 Wn. App. 585 (Div. II, 1999) - April 00:18

In forfeiture matter, county's "notice of seizure" alone doesn't freeze bank account. Snohomish County v. City Bank, 100 Wn. App. 35 (Div. I, 2000) - July 00:12

Intent to deliver drugs proved by the following evidence: defendant's possession of 1) nearly \$2000 in bills; 2) a single baggie containing 25 grams of rock cocaine; 3) a pager, a cell phone and a charger for the cell phone; plus 4) a handwritten note containing the Spanish word for "snow" and columns of numbers. State v. Campos, 100 Wn. App. 218 (Div. III, 2000) July 00:12

"Unwitting possession" instruction should have been given to jury in prosecution for "unlawful possession of a firearm." State v. May, 100 Wn. App. 477 (Div. III, 2000) - July 00:20

VAGUENESS DOCTRINE

Fourth prong of harassment statute is not vague or overbroad. State v. Williams, 98 Wn. App. 765 (Div. I, 2000) - July 00:13

"Dagger" is not an unconstitutionally vague term. State v. Leatherman, 100 Wn. App. 318 (2000) - August 00:19

VIENNA CONVENTION

No exclusion of confession for violating Vienna Convention requirement that police tell arrested foreign national of right to consulate notification. U.S. v. Lombera-Camorlinga, 206 F.3d 882 (9th Cir. 2000) - May 00:12 Status: Review denied by U.S. Supreme Court by order dated 11/13/00.

No exclusion of confession for police violation of Vienna Convention requirement that government tell arrested foreign national of right to consulate notification. State v. Martinez-Lazo, 100 Wn. App. 869 (Div. III, 2000) - August 00:13

WILDLIFE AND FISHERIES RELATED LAWS

Stealing contaminated clams from private bed, selling them for over \$500, is Theft Two. State v. Longshore, 97 Wn. App. 144 (Div. II, 1999) - February 00:21. Affirmed by State Supreme Court; see below.

Property owner not justified in shooting dogs chasing wild deer across his property. State v. Long, 98 Wn. App. 669 (Div. II, 2000) - April 00:17

Stealing uncertified clams from private bed and selling them for over \$500, is Theft Two. State v. Longshore, 141 Wn.2d 414 (2000) - October 00:14

WASHINGTON STATE SUPREME COURT

NO STANDING UNDER STEAGALD FOR DAY-VISITOR TO CHALLENGE POLICE ENTRY OF HOST'S HOME; IN ANY EVENT, CONSENT OK BECAUSE REQUEST WAS NOT SUBJECT TO FERRIER WHERE OFFICERS WERE ASKING HOST FOR PERMISSION TO ENTER AND LOOK FOR VISITOR WANTED ON ARREST WARRANT

State v. Williams (Harlan M.), ___Wn.2d ___ (2000) 2000 WL 1535891

Facts: (Excerpted from majority opinion)

During the afternoon of April 27, 1998, a citizen contacted Everett police officer Jeff Katzer outside of the Snohomish County Jail and informed the officer that Harlan Williams, the defendant, had a warrant out for his arrest and that he was currently at a local residence. The citizen also provided a description of the defendant's clothing and green van. The officer confirmed that Williams had an outstanding felony arrest warrant, drove to the described residence, and identified the defendant's green van parked outside in the parking lot. Officer Katzer requested further assistance, and Officer McAllister arrived on the scene.

The two officers approached the apartment's open door and called inside for Williams. The tenant, Alan Jelinek, appeared at the doorway. Officer Katzer told Jelinek that he was looking for the defendant, whose van was in the parking lot. Jelinek said that he did not know the defendant nor the owner of the green van. Officer Katzer advised Jelinek that there was a warrant for Williams' arrest and asked for Jelinek's consent to enter into the apartment to look for the defendant. Jelinek said yes and stepped back to allow the officers to enter.

When the officers entered the apartment, they immediately spotted the defendant. The officers identified the defendant by the scars on his arms. The defendant shortly thereafter confirmed his identity. The officers placed the defendant under arrest. In a search incident to the arrest, the officers found .8 grams of a black tar substance in the defendant's pocket that field-tested positive for heroin.

Later, Officer Katzer contacted Jelinek and confirmed that the defendant was not living at Jelinek's apartment and that the defendant had just come over to help

move some of Jelinek's belongings with the van. He also confirmed that Jelinek had willingly given the officers permission to enter his home on April 27.

Proceedings:

Williams was charged with possession of heroin. He moved to suppress. He argued that, even though he was a mere day-visitor to Jelinek's home, under the Washington Supreme Court decisions in State v. Simpson, 95 Wn.2d 170 (1980) and State v. Michaels, 60 Wn.2d 638 (1962), he had "automatic standing" to challenge the entry of Jelinek's home. Williams argued further that the officers had not obtained valid consent to enter Jelinek's home, because the officers did not give Jelinek the warnings required under the Washington Supreme Court decision in the "knock and talk" case of State v. Ferrier, 136 Wn.2d 103 (1998) **Oct. 98 LED:02**. The trial court agreed and granted the motion to suppress.

ISSUES AND RULINGS: (1) Does Williams, a mere day-visitor in Jelinek's home, have standing to challenge the validity of the consent-to-entry given by Jelinek? (ANSWER: No, rules a 5-4 majority; while Washington apparently retains the "automatic standing" doctrine under article 1, section 7 of the Washington Constitution, Williams does not qualify under the doctrine); (2) Assuming standing for the sake of argument, was Jelinek's consent-to-entry valid where he gave it voluntarily, but the officers did not first inform him of his rights under State v. Ferrier (i.e., were the officers required to advise Jelinek of his rights to refuse, to restrict scope, and to retract at any time)? (ANSWER: No, rules the same 5-4 majority; this consent request was not subject to Ferrier because the request was not a "fishing expedition" like that in Ferrier, and it did not involve the same coercive tactics as the "knock and talk" consent request involved in Ferrier).

Result: Reversal of Snohomish County Superior Court suppression ruling; case remanded for trial.

ANALYSIS: (Excerpted from Supreme Court majority opinion)

(1) Lack of standing of visitor Williams to assert Jelinek's consent search rights

The United States Supreme Court had rejected the doctrine of automatic standing in United States v. Salvucci, 448 U.S. 83 (1980).

Automatic standing began as a unique method to deal with a particular problem in search and seizure cases where possession is an element of an offense. In Jones v. United States, 362 U.S. 257 (1960), the Supreme Court perceived two distinct problems inherent in challenging police searches that produced contraband. The first problem was "that a defendant charged with a possessory offense might only be able to establish his standing to challenge a search and seizure by giving self-incriminating testimony admissible as evidence of his guilt" The second "dilemma" was the "'vice of prosecutorial self-contradiction' whereby the Government would assert that the defendant possessed the goods in question while simultaneously asserting that he did not possess them for the purposes of claiming the protections of the Fourth Amendment" The Court in Jones attempted to eliminate these dilemmas by creating automatic standing, which allowed the defendant to challenge police searches without making self-incriminating statements, where the fruits produced evidence of a possessory offense.

The [U.S.] Supreme Court abandoned the automatic standing doctrine in Salvucci. The Court recognized that Simmons v. United States, 390 U.S. 377 (1968), eliminated most of the defense and prosecutorial dilemmas which had led it to adopt the doctrine.

...

Although defunct in the federal courts, automatic standing still maintains a presence in Washington. We first adopted automatic standing in State v. Michaels, 60 Wn.2d 638 (1962), where we approved of the Supreme Court's reasoning in Jones. After Salvucci, we addressed the changes to federal law and a plurality of the Court determined that the Washington Constitution's greater privacy protections required adherence to the automatic standing doctrine. State v. Simpson, 95 Wn.2d 170 (1980). The plurality recognized that "Simmons, as interpreted by the [U.S. Supreme] Court in Salvucci, does not provide sufficient protection against the self-incrimination dilemma. In Washington, prior statements made by a defendant are admissible at trial for purposes of impeachment." The plurality concluded that "[u]nder these circumstances, we discern both a continuing policy basis and firm state constitutional grounds for adherence to the automatic standing rule. The rule is already established under our state constitution and has served our state well for 17 years Although there may be ample support in this statement to conclude that our state constitution requires automatic standing, we agree with the State that this is not a proper case to apply automatic standing.

In Michaels, we acknowledged that application of automatic standing is proper where (1) "[the defendant] is legitimately on the premises where a search occurred" and (2) "the fruits of the search are proposed to be used against him." Based on that language, the trial court here concluded that automatic standing exists whenever there is a search and a subsequent seizure of contraband. We believe, however, that this is an overly broad interpretation of the conditions for automatic standing outlined in Jones. Inherent in the conditions for automatic standing is the principle that the "fruits of the search" bear a direct relationship to the search the defendant seeks to contest.

Here, the defendant fails to meet the criteria for application of the automatic standing doctrine. The defendant stipulated that the police officers found the heroin on his person. The defendant has standing to object to an illegal search of his person. But, the defendant does not challenge the search of his person, which was a valid search incident to his arrest under a valid arrest warrant. He is challenging only the officer's entry into a third party's residence to serve the arrest warrant. The defendant's ability to challenge that entry does not depend upon his admission to possession of contraband or to any other illegal activity. We cannot agree that the automatic standing rule as originally conceived by the [U.S.] Supreme Court would have any application where there is no conflict in the exercise of his Fourth and Fifth Amendment rights. Moreover, as expressed by the plurality opinion in Simpson, the automatic standing rule may not be used where the defendant is not faced with "the risk that statements made at the suppression hearing will later be used to incriminate him albeit under the guise of impeachment." Automatic standing is not a vehicle to collaterally attack every police search that results in a seizure of contraband or evidence of a crime.

(2) Inapplicability of Ferrier “knock and talk” consent-warnings requirement to facts of this case

Additionally, the defendant's challenge to this police search would fail, even if we found that Williams had a sufficient expectation of privacy in Jelinek's apartment to confer standing. The United States Supreme Court has held that an arrest warrant "authorizes a limited invasion of that person's privacy interest when it is necessary to arrest him in his home." Steagald v. United States, 451 U.S. 204 (1981). The Court further held in Payton v. United States, 445 U.S. 573 (1980), that "an arrest warrant founded on probable cause implicitly carries with it the limited authority to enter a dwelling in which the suspect lives when there is reason to believe the suspect is within." The Court reasoned that

an arrest warrant requirement may afford less protection than a search warrant requirement, but it will suffice to interpose the magistrate's determination of probable cause between the zealous officer and the citizen. If there is sufficient evidence of a citizen's participation in a felony to persuade a judicial officer that his arrest is justified, it is constitutionally reasonable to require him to open his doors to the officers of the law.

Thus, even if Williams had standing in his own right, he would be unable to successfully challenge a police entry of his own home to serve an arrest warrant. We find no reason to confer additional privacy protections to suspects who are arrested in other person's homes. We agree with the Ninth Circuit's observation that "[i]f an arrest warrant and reason to believe the person named in the warrant is present are sufficient to protect that person's fourth amendment privacy rights in his own home, they necessarily suffice to protect his privacy rights in the home of another."

The defendant argues, however, that the Washington Constitution offers more protective privacy rights under article I, section 7 than the United States Constitution and cites to our recent decision in [State v. Ferrier, 136 Wn.2d 103 (1998) **Oct 98 LED:02**]. In that case, we adopted the standard of the New Jersey Supreme Court, which held that "where the State seeks to justify a search on the basis of consent it has the burden of showing that the consent was voluntary, an essential element of which is knowledge of the right to refuse consent." The court went further

to state the obvious-that the only sure way to give such a protection substance is to require a warning of its existence. If we were to reach any other conclusion, we would not be satisfied that a home dweller who consents to a warrantless search possessed the knowledge necessary to make an informed decision. That being the case, the State would be unable to meet its burden of proving that a knowing and voluntary waiver occurred.

In light of that barrier, we adopted the rule that "article I, section 7 is violated whenever the authorities fail to inform home dwellers of their right to refuse consent to a warrantless search." Thus,

when police officers conduct a knock and talk for the purpose of obtaining consent to search a home, and thereby avoid the necessity of obtaining a warrant, they must, prior to entering the home, inform the person from whom consent is sought that he or she may lawfully refuse to consent to the search and that they can revoke, at any time, the consent that they give, and can limit the scope of the consent to certain areas of the home.

We recently limited Ferrier to the kind of coercive searches the police employed there. State v. Bustamante-Davila, 138 Wn.2d 964 (1999) **Nov 99 LED:02**. We rejected the contention that Ferrier was a "bright-line" rule required in every case where police obtain search authority by consent. Rather, "[t]his Court limited its holding in Ferrier to employment of a 'knock and talk' procedure." The police officers in Bustamante-Davila accompanied a United States Immigration and Naturalization Service agent serving a deportation order on the defendant at the defendant's home. The court observed that the officers "merely accompanied the INS agent as backup, a standard practice in INS arrest and deportation matters." At the defendant's door, the defendant consented to entry into his home, where eventually the INS agent and police officers spotted an illegally held rifle in plain view. The court found that "Petitioner did not consent to a search, but consented to entry into his home by the INS agent . . . Petitioner at least impliedly consented to entry by the local police officers accompanying the INS agent."

We find that this situation is indistinguishable from Bustamante-Davila. In this situation, the police officers did not seek to enter Jelinek's apartment to look for contraband or to arbitrarily search a home for a hidden guest. The officers in this case first verified the accuracy of an informant's statement and identified the defendant's vehicle in front of Jelinek's apartment, which allowed the officers to reasonably conclude that Williams was inside. Subsequently, when the officers spoke with Jelinek, the officers did not request permission to search the premises but only asked whether the defendant was inside. Jelinek told the officers that there was a guest in his home and that he knew the guest by another name. He agreed to allow the police officers to come inside and confirm the identities of the persons inside. Considering the limited purpose of the police entry and that Jelinek acknowledged that he had guests inside, this case does not resemble a "knock and talk" warrantless search that Ferrier intended to prevent.

We recognize that law enforcement officers need to enter people's homes in order to provide their valuable services for the community on a daily basis. We do not find it prudent or necessary to extend Ferrier to require that police advise citizens of their right to refuse entry every time a police officer enters their home. Police officers are oftentimes invited into homes for investigative purposes, including inspection of break-ins, vandalism, and other routine responses. We do not find a constitutional requirement that a police officer read a warning each time the officer enters a home to exercise that investigative duty. To apply the Ferrier rule in these situations would unnecessarily hamper a police officer's ability to investigate complaints and assist the citizenry. Instead, we limit the requirement of a warning to situations where police seek to conduct a search for contraband or evidence of a crime without obtaining a search warrant.

We hold that the police officers' entry into Jelinek's home was valid and reverse the trial judge's order suppressing the admission of heroin.

[Some citations omitted]

LED EDITORIAL COMMENTS REGARDING WILLIAMS DECISION

1. Scope of Ferrier-consent-warnings requirement remains unclear

Many prosecutors will continue to advise after Williams that officers give the 3-Rs Ferrier warnings (admonishing as to the right to refuse, to restrict scope, and to retract at any time) whenever officers request consent, regardless of the circumstances. Officers should of course follow the advice of their local prosecutors. Also, of course, in light of the vagaries of suppression hearings and voluntariness determinations, it is always legally safer to give the warnings.

But it does appear that the Washington appellate courts are limiting the reach of Ferrier. Clearly, Ferrier expressly holds that, in “knock and talk” residential consent requests where officers wish to use consent as the basis for a warrantless search for contraband or evidence, officers must give the 3-Rs warnings to get a valid consent. On the other hand, Ferrier has since been held to not apply to situations where officers are seeking consent to enter a residence: (A) in order to make an arrest on an arrest warrant (see Williams); (B) to assist INS in arresting on an INS deportation order (see State v. Bustamonte-Davila, 138 Wn.2d 964 (1999) Nov. 99 LED:02); and (C) to look for possible victims in a possible DV situation (see State v. Leupp, 96 Wn. App. 324 (Div. II, 1999) Oct. 99 LED:05).

Only time will tell whether and to what extent Washington appellate courts will apply the “independent grounds” rule of Ferrier to other situations beyond residential “knock and talk.” The Ferrier majority opinion is laced with references to the heightened privacy protection of residences, thus supporting a prosecutor’s argument that Ferrier should not be extended to non-residential situations. However, we believe that there is a good chance that Ferrier will be extended at some point to “contraband fishing expeditions” outside residential “knock and talk,” particularly in the post-traffic stop request (which raises questions of discriminatory application).

2. Existence and terms of any “automatic standing” rule are unclear

Questions relating to exceptions to the Exclusionary Rule, such as “standing” questions and “inevitable discovery” questions, should not be first-priority questions for law enforcement officers. Instead of trying to finesse constitutional limits or “crystal ball” technical arguments that might arise in suppression rulings, officers should be trying to act within the limits of the constitution. But, that said, we will try to give a brief summary of the “automatic standing” question.

Because the majority opinion in Williams concludes that the facts of the case do not qualify for application of “automatic standing,” it may be argued by the State in future cases that Washington does not have an “automatic standing” rule under article 1, section 7 of the Washington constitution. But we think that it is unlikely that the State will prevail on that argument, both in light of the makeup of the current Supreme Court and in light of the language in the majority and dissenting opinions in Williams.

Our guess at the article 1, section 7 “automatic standing” rule, assuming that language in the Williams majority opinion is a guide, is a three-part test along the following lines: (1) the defendant is charged with a crime with possession of an item as an element (past Washington decisions have held that this element of the test eliminates the “automatic standing” claim in cases charging robbery, arson, theft, and burglary, among others);

(2) the defendant was in possession of the item at the time of the police search or seizure; and (3) the defendant would incriminate himself in a suppression hearing by asserting a privacy interest in the item searched or seized (on this latter point, “automatic standing” might not apply to a person charged with possession of stolen property if his claim was that he was using the item with the owner’s permission, that he bought it in good faith, etc.).

3. Williams does not change the Payton/Steagald rules for residential entry to arrest

Because the officers in the Williams case obtained valid consent to enter the residence, the entry to arrest Williams was lawful. Remember, however, the rules for entry to arrest. It must be noted that, regardless of the “standing” of the arrestee to challenge an entry and arrest in a third party’s residence, third party residents themselves can sue for Fourth Amendment violations if officers violate their rights.

Under Payton v. New York, 445 U.S. 573 (1980), in order to make a lawful entry of a person’s own residence to arrest him, probable cause to arrest, alone, does not justify entry of the residence to arrest the person. Officers must also have one of the following: (A) an arrest warrant plus reason to believe the person is at home at the time; (B) consent to enter; (C) probable cause as to emergency circumstances or exigent circumstances (including “hot pursuit”); or (D) a search warrant.

Under Steagald v. U.S., 451 U.S. 204 (1981), in order to make a lawful entry of a third party’s residence to arrest a non-resident of the premises, again, probable cause to arrest, alone, does not justify entry. In addition, officers must have one of the following: (A) a search warrant; (B) consent to enter (as was the case in Williams); or (C) probable cause as to emergency circumstances or exigent circumstances (including “hot pursuit”).

Finally, under the goal-tending-like rule of Washington Court decisions interpreting the Payton-Steagald rules, “entry” by officers includes their act of reaching across the threshold at an open doorway and grabbing a person just inside the threshold; i.e., officers violate the rules by doing so absent the existence of one of the alternative justifications for “entry” set forth above. Officers also violate the Payton-Steagald rules if they order the person to come outside the premises absent the alternative justifications for entry set forth above (but if the person voluntarily steps across the threshold onto an unenclosed porch or onto a sidewalk not entitled to privacy protection, then the arrest may be made).

BRIEF NOTES FROM THE WASHINGTON STATE SUPREME COURT

(1) **FISH AND WILDLIFE OFFICERS, INCLUDING EX OFFICIO OFFICERS, CAN MAKE A WARRANTLESS ARRESTS FOR VIOLATION OF FISH AND WILDLIFE STATUTES AND RULES** -- In Staats v. Brown, 139 Wn.2d 757 (2000), in a split decision, Washington State Supreme Court holds in a civil action against the Department of Fish and Wildlife and a WDFW officer that the trial court erred when it dismissed the action. The Staats court holds that, while the officer had authority to make a warrantless, probable cause arrest under the Fish and Wildlife statutes, the officer and WDFW are not entitled to qualified immunity on excessive force and unlawful search claims in the case.

Plaintiff Staats’ first claim was for unlawful arrest for obstructing (based on a former Fish and Wildlife statute on obstructing). In turn, the lawfulness of the obstructing arrest turned on

whether the officer could rely on probable cause, rather than needing an “in the presence” violation, in citing *Staats* for beginning fisheries-impacting construction without a permit. The Court holds that the officer could cite *Staats* based on probable cause.

The Supreme Court looks to a statute in former Title 75 RCW. The statute in question is currently codified at RCW 77.15.092, and currently reads as follows: “Fish and wildlife officers and ex officio fish and wildlife officers may arrest without warrant persons found violating the law or rules adopted pursuant to this chapter.”

The *Staats* majority view on the lawfulness-of-arrest issue – not found in the anti-enforcement views articulated in the lead opinion by Justice Sanders, but instead cobbled together from concurring opinions in the case -- is that: (1) Fish and Wildlife officers (and ex officio officers) may lawfully make custodial arrests, under the authority of what is now RCW 77.15.092, based on a gross misdemeanor violation of the Fish and wildlife laws requiring construction permits (as well as for other criminal violations of Fish and Wildlife statutes and rules); and (2) the arrest may be based on probable cause—i.e., an arrest for criminal violation of a Fish and Wildlife statute or rule may be made even if the offense did not occur in the presence of the officer. Even though Fish and Wildlife violations are not listed in RCW 10.31.100 as exceptions to the “misdemeanor presence” rule for arresting and citing violators, the Fish and Wildlife code provision at RCW 77.15.092 independently supports the citation or arrest on probable cause.

As to the excessive force claim, however, the Supreme Court applies the “objective reasonableness” standard. Assuming all of *Staats*’ allegations to be true, as courts must do in reviewing a motion to dismiss, the *Staats* Court determines that the alleged use of force was not objectively reasonable as a matter of law. *Staats*’ right to be free from such excessive force was clearly established, and qualified immunity was not appropriate. **[LED Editorial Note: We won’t address the facts in this brief LED entry. Note the test of “reasonableness” for purposes of testing Fourth Amendment lawfulness of use of force looks at: (1) the severity of the crime at issue; (2) whether the suspect poses an immediate threat to the safety of the officer or others; and (3) whether the suspect is actively resisting arrest or attempting to evade arrest by flight.]**

As to the illegal search claim, the Supreme Court states that “the right to be free of warrantless entry into one’s home, except in rare circumstances, is not merely ‘sufficiently clear’ under the Fourteenth and Fourth Amendments – it is crystalline.” Again assuming to be true the allegations of the plaintiff for purposes of reviewing the state’s motion to dismiss, the *Staats* Court concludes that plaintiff stated a case for “illegal search” which must be resolved by a jury.

Result: Affirmance in part, reversal in part, of Court of Appeals decision reversing Asotin County Superior Court dismissal; case remanded for trial.

(2) SELF-DEFENSE STANDARD FOR INMATES USING FORCE AGAINST CORRECTIONS OFFICERS IS SAME AS FOR CIVILIANS RESISTING POLICE ARREST: DEFENDANT CAN RESPOND WITH FORCE ONLY IF “ACTUAL, IMMINENT DANGER OF SERIOUS INJURY” - In *State v. Bradley*, ___ Wn.2d ___, 10 P.3d 358 (2000), the Supreme Court rules, 5-4, that an inmate using force to resist force applied by a corrections officer has no self-defense justification if the State proves beyond a reasonable doubt that the force by corrections officer(s) did not present “actual, imminent danger of serious injury.”

Bradley became involved in a physical altercation with a correctional officer at the King County Jail. He was charged with custodial assault. His testimony at trial differed significantly from that of the correctional officers, both in terms of what precipitated the altercation and what transpired during the fight that followed.

Bradley raised a self-defense claim at trial. Under Washington case law, the State must prove beyond a reasonable doubt that the defendant's self-defense claim is not justified. The jury was so instructed. In addition, the trial judge instructed the jury that, where the self-defense claim is in relation to use of force by an inmate against a corrections officer, the standard is whether there was an actual, imminent danger of serious injury in the actions of the corrections officer(s).

The jury convicted Bradley of custodial assault. He appealed, arguing that the jury should have been instructed on an "apparent...danger" self-defense standard, not an "actual...danger" standard.

Washington case law establishes that where self-defense is raised in the context of **citizen-against-citizen** assault charges, the standard is one of apparent, not actual, danger. If a non-aggressor citizen has a good faith and reasonable belief that another person's actions place him or her in imminent danger of death or serious injury, then the citizen may respond with force.

But Washington case law has taken a different approach to the **citizen-against-police** assault charges. In that context, the Bradley majority opinion declares Washington case law establishes that a citizen non-aggressor may use force to resist arrest only if the arrestee faces actual, as opposed to apparent, imminent danger of death or serious injury.

The Bradley majority opinion concludes that the citizen-against-police self-defense standard applies equally to **inmate-against-corrections officer** self defense. Because the trial court in Bradley had given a self-defense instruction using an "actual danger" rule, the Bradley majority rules that his jury was properly instructed.

Justices Sanders, Alexander, Madsen, and Johnson dissent, arguing in vain for a pro-defendant "apparent danger" standard.

Result: Affirmance of Court of Appeals decision that, in turn affirmed the King County Superior Court conviction of Alonzo Bradley for custodial assault.

BRIEF NOTE FROM THE WASHINGTON STATE COURT OF APPEALS

SUBSTANTIAL COMPLIANCE IS NO DEFENSE TO CHARGE OF FAILING TO REGISTER AS A SEX OFFENDER – In State v. Vanderpool, 99 Wn. App. 709 (Div. III, 2000), the Court of Appeals concludes that substantial compliance is not a defense to failing to register as a sex offender under RCW 9A.44.130.

The defendant, a convicted sex offender, complied with the registration requirements of RCW 9A.44.130 for approximately four years, while living in Benton County. He then moved to Spokane County and registered there. He did not, however, notify Spokane County when he later moved back to Benton County. He was convicted in Spokane County Superior Court of failing to register as a sex offender.

Vanderpool argued for the first time on appeal that he "substantially complied" with the registration requirements. The Vanderpool Court holds that the defendant cannot raise the issue for the first time on appeal. However, the Vanderpool Court also goes on to reject the merits of his argument as well, stating:

The policy of RCW 9A.44130 is to allow law enforcement agencies to protect their communities, conduct investigations and quickly apprehend sex offenders. ... Without strict compliance with the registration requirements, this policy is undermined. Furthermore, allowing substantial compliance as a defense would

conflict with the well-established rule that “a good faith belief that a certain activity does not violate the law is ...not a defense in a criminal prosecution.” ...We conclude substantial compliance is not a defense under the facts of this case.

Even assuming substantial compliance was a defense, the facts would not support it. Mr. Vanderpool contends that since he was arrested in Benton County shortly after leaving Spokane County, the authorities knew his whereabouts. While Benton County may have known Mr. Vanderpool’s whereabouts, Spokane County was not notified. RCW 9A.44.130(5)(a) specifically states: “The person must also send written notice within ten days of the change of address in the new county to the county sheriff with whom the person last registered.” By his own admission, Mr. Vanderpool did not notify Spokane County. This is simple nonperformance, not misperformance.

[Some citations omitted]

The defendant also challenged the sufficiency of the evidence, arguing that, because he did not understand the statute, he did not “knowingly” violate the statute. The Court of Appeals also rejects this argument, noting that he complied with the statute for at least four years, and even if such long-term compliance were not clear evidence that he understood his responsibilities, “ignorance of the law is no excuse.” [Citation omitted.]

Result: Affirmance of Spokane County Superior Court conviction of Steven Leroy Vanderpool for failing to register as a sex offender.

INTERNET ACCESS TO COURT DECISIONS, STATUTES, AND COURT RULES

The Washington Office of the Administrator for the Courts maintains a web site with appellate court information, including recent court opinions by the Washington Court of Appeals and Washington Supreme Court. The address is [<http://www.courts.wa.gov/>]. Washington decisions issued in the preceding 90 days may be accessed by entering search terms, and decisions issued in the preceding 14 days may be accessed through a separate link clearly designated. Many 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 WSP equipment rules at Title 204 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>]. Access to current Washington WAC rules, as well as RCW’s current through 1999 can be accessed from the “Legislative Information” page at [<http://www.leg.wa.gov/wsladm/ses.htm>]. The text of acts adopted in the 2000 Washington legislature is available at the following address: [<http://www.leg.wa.gov>]. Look under “bill info,” “house bill information/senate bill information,” and use bill numbers to access information.

The Law Enforcement Digest is co-edited by Senior Counsel John Wasberg and Assistant Attorney General Shannon Inglis, both of the Washington Attorney General’s Office. Questions and comments regarding the content of the LED should be directed to Mr. Wasberg at 206 464-6039; Fax 206 587-4290; E Mail [johnw1@atg.wa.gov]. Questions regarding the distribution list or delivery of the LED should be directed to Kim McBride of the Criminal Justice Training Commission (CJTC) at (206) 835-7372; Fax (206) 439-3752; e mail [kmcbride@cjtc.state.wa.us]. LED editorial comment and analysis of statutes and court decisions expresses the thinking of the writers and does not necessarily reflect the views of the Office of the Attorney General or the CJTC. The LED is published as a research source only. The LED does not purport to furnish legal advice. LED’s from January 1992 forward are available on the Commission’s Internet Home Page at: [<http://www.wa.gov/cjt>].