



Law Enforcement

June 2003

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2003 LEGISLATIVE UPDATE – PART TWO

LED Introductory Editorial Notes: This is Part Two of a three-or-four part update of 2003 Washington legislative enactments of interest to law enforcement. We included in Part One in April just one enactment, a bill on felony-murder that had already gone into effect. Note that, unless a different effective date is specified in the legislation, enactments adopted during the 2003 regular session take effect on July 27, 2002, i.e., 90 days after the end of the regular session.

Thank you to Tom McBride and Pam Loginsky of the Washington Association of Prosecuting Attorneys for providing us with helpful information.

Consistent with our past practice, our legislative updates will for the most part not digest legislation in the subject areas of sentencing, consumer protection, retirement, collective bargaining, civil service, tax, budget, and worker benefits. We will include in a later LED this year a cumulative index of enactments covered in the 2003 legislative update.

The text of the 2003 legislation is available on the Internet, chapter by chapter, at [http://www.leg.wa.gov/pub/billinfo/2003-04/chapter_to_bill_table.htm]. We will incorporate some RCW references in our entries, but where new sections or chapters are created by the legislation, the State Code Reviser must assign the appropriate code numbers. Codification will likely not be completed until early fall of this year.

We remind our readers that any legal interpretations that we express in the LED are the views of the editors and do not necessarily reflect the views of the Attorney General's Office or of the Criminal Justice Training Commission.

RESTORATION OF JUVENILE DRIVING PRIVILEGES UPON REACHING TWENTY-FIRST BIRTHDAY

CHAPTER 20 (SHB 1416)

Effective Date: July 27, 2003

RCW 46.20.265 requires the Department of Licensing to revoke the driving privileges of a juvenile pursuant to RCW 9.41.040(5), 13.40.265, 66.44.365, 69.41.065, 69.50.420, 69.52.070, or substantially similar ordinance, or pursuant to RCW 13.40.265.

This bill amends RCW 46.20.265 to provide that revocation imposed pursuant to this section shall not extend beyond the juvenile's twenty-first birthday, and to allow a juvenile to seek reinstatement of driving privileges from DOL when he or she turns twenty-one.

COMMUNICATING WITH A MINOR – OR ONE BELIEVED TO BE A MINOR – FOR IMMORAL PURPOSES

CHAPTER 26 (SB 5570)

Effective Date: July 27, 2003

This bill amends RCW 9.68A.090 to also make it a crime to communicate with someone the person believes to be a minor for immoral purposes. The full text of the bill reads as follows:

A person who communicates with a minor for immoral purposes, or a person who communicates with someone the person believes to be a minor for immoral purposes, is guilty of a gross misdemeanor, unless that person has previously been convicted under this section or of a felony sexual offense under chapter 9.68A, 9A.44, or 9A.64 RCW or of any other felony sexual offense in this or any other state, in which case the person is guilty of a class C felony punishable

under chapter 9A.20 RCW.

**DISTRICT COURT JURISDICTION OVER CIVIL CAUSES OF ACTION INVOLVING
COMMERCIAL ELECTRONIC E-MAIL**

CHAPTER 27 (SB 5574)

Effective Date: July 27, 2003

Chapter 19.190 RCW prohibits certain unpermitted or misleading commercial e-mail, makes it a violation of the Consumer Protection Act to send such e-mail, and subjects the sender to civil damages.

This bill amends RCW 3.66.020 and .040 to give the district courts jurisdiction over actions relating to the prohibited sending of such commercial e-mail.

**SALE, DISTRIBUTION, OR INSTALLATION OF AIR BAGS – CRIME TO KNOWINGLY
INSTALL PREVIOUSLY DEPLOYED AIR BAG**

CHAPTER 33 (SSB 5117)

Effective Date: July 27, 2003

This bill adds three new sections to Chapter 47.37 RCW and amends RCW 46.63.020. Section 1 defines “air bags,” “previously deployed air bags,” and “nondeployed salvage air bags” as follows:

- (1) “Air bag” means an inflatable restraint system or portion of an inflatable restraint system installed in a motor vehicle.
- (2) “Previously deployed air bag” means an inflatable restraint system or portion of the system that has been activated or inflated as a result of a collision or other incident involving the vehicle.
- (3) “Nondeployed salvage air bag” means an inflatable restraint system that has not been previously activated or inflated as a result of a collision or other incident involving the vehicle.

Section 2 of the bill makes it a crime to knowingly install a previously deployed air bag for compensation. It provides:

- (1) A person is guilty of a gross misdemeanor if he or she knew or reasonably should have known that an air bag he or she installs or reinstalls in a vehicle for compensation, or distributes as an auto part, is a previously deployed air bag that is part of an inflatable restraint system.
- (2) A person found guilty under subsection (1) of this section shall be punished by a fine of not more than five thousand dollars or by confinement in the county jail for not more than one year, or both.

Section 3 requires that when an air bag that is part of a previously deployed inflatable restraint system is replaced by either a new air bag or a nondeployed salvage air bag, the air bag must conform to the original equipment manufacturer requirements.

**DEVELOPMENT OF MODEL POLICY ON VEHICULAR PURSUITS; ADOPTION AND
TRAINING REQUIREMENTS**

CHAPTER 37 (SSB 5165)

Effective Date: July 27, 2003

This bill requires the Criminal Justice Training Commission, the Washington State Patrol, the Washington Association of Sheriffs and Police Chiefs, and organizations representing local law enforcement officers to develop a model policy on vehicular pursuits, which meets a number of minimum standards, by December 2003.

The bill requires that all law enforcement agencies in the state adopt and implement a written vehicular pursuit policy by June 2004. The policy may, but need not, be the model policy. However, the agency policy must address the minimum standards.

The bill also requires that all new full-time law enforcement officers employed after the July 27, 2003 effective date of the bill must be trained on vehicular pursuits by June 30, 2006, and beginning on July 1, 2006, every new full-time law enforcement officer must be trained in vehicular pursuits within six months of hire.

THREE-WHEELED MOTORCYCLES – ENDORSEMENTS AND EDUCATION

CHAPTER 41 (ESSB 5229)

Effective Date: July 27, 2003

Section 4 of the bill amends the definition of motorcycle in RCW 46.81A.010(4) to read as follows:

“Motorcycle” means a ~~((motorcycle licensed under chapter 46.16 RCW, and does not include motorized bicycles, mopeds, scooters, off-road motorcycles, motorized tricycles, side-car equipped motorcycles, or four-wheel all-terrain vehicles))~~ motor vehicle designed to travel on not more than three wheels in contact with the ground, on which the driver rides astride the motor unit or power train and is designed to be steered with a handle bar, but excluding farm tractors, electric personal assistive mobility devices, mopeds, motorized bicycles, and off-road motorcycles.

Section 1 of the bill amends RCW 46.20.500(1) to require a special motorcycle endorsement in order to operate a three-wheeled motorcycle, and Section 3 of the bill amends RCW 46.20.515 to require a separate three-wheeled motorcycle examination prior to obtaining a three-wheeled motorcycle endorsement.

EXPANDING RCW 9A.56.290’S PROHIBITION ON “CREDIT CARD FACTORING” AND INCREASING PENALTIES FOR REPEAT OFFENDERS

CHAPTER 52 (SSB 5719)

Effective Date: July 1, 2004

Adds the definition of “payment card” to RCW 9A.56.080(7) as follows:

“Payment card” means a credit card, charge card, debit card, stored value card, or any card that is issued to an authorized card user and that allows the user to obtain goods, services, money, or anything else of value from a merchant.

Amends RCW 9A.56.290 to include payment cards, removes the requirements of proving intent to commit fraud or theft from certain alternative means, removes the requirement that the victim suffer monetary damages, and makes a second conviction a class B felony.

REORGANIZING CRIMINAL STATUTES TO FACILITATE COMMUNICATION REGARDING CRIMINAL HISTORY

CHAPTER 53 (SB 5758)

Effective Date: July 1, 2004

This bill amends hundreds of statutes, most of them criminal statutes, throughout the various RCW Titles. The amendments reorganize and restructure the statutes. Some new sections will be assigned code numbers by the Code Reviser under the changes. The purpose of each of the amendments is purely technical, not substantive. That purpose is to facilitate communication regarding criminal history. The changes do two basic things: 1) clearly identify as to each offense its classification as a misdemeanor, gross misdemeanor, or a class A, B, or C felony; and 2) provide that each criminal provision is set forth in a separate subsection that can be uniquely cited for the specific offense.

VACATION OF CONVICTION RECORDS FOR THOSE CONVICTED PRIOR TO EFFECTIVE DATE OF SENTENCING REFORM ACT

CHAPTER 66 (SHB 1346)

Effective Date: July 27, 2003

This bill allows individuals convicted of offenses prior to the effective date of the Sentencing Reform Act (SRA), Chapter 9.94A RCW, to have their convictions vacated under the same circumstances as individuals convicted under the SRA, and provides that such vacated convictions will be treated the same as vacated SRA convictions.

DECLARING VOID FOR VIOLATION OF PUBLIC POLICY COMMERCIAL CONTRACTS THAT PROHIBIT MERCHANTS OR RETAILERS FROM REQUIRING ADDITIONAL IDENTIFICATION FROM CUSTOMERS PAYING WITH CREDIT OR DEBIT CARDS

CHAPTER 89 (SB 5720)

Effective Date: July 27, 2003

Adds a new section to chapter 19.192 RCW declaring to be void for violation of public policy any provision of a contract between a merchant or retailer and a financial institution, which prohibits the merchant or retailer from verifying the identity of a customer paying by credit or debit card by requiring the customer provide additional identification. (There is no requirement that a merchant or retailer request identification.)

WASHINGTON STATE COURT OF APPEALS

NO "CUSTODY" FOR PURPOSES OF MIRANDA WARNINGS REQUIREMENT WHERE QUESTIONING OCCURRED DURING TERRY STOP OF SUSPECTED CAR THIEF

State v. Cunningham, ___ Wn. App. ___, 65 P.3d 325 (Div. III, 2003)

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

Officer Anthony Meyer heard Officer [John] O'Brien's description of the driver of the stolen vehicle over his police radio. Officer Meyer soon spotted a man matching the description jogging in his patrol area. The officer contacted the young man as he was knocking on the door of a residence. The man wore a gray sweatshirt but was carrying a blue and white flannel shirt. He was breathing hard as if he had been running. When Officer Meyer asked the young man his name, he said it was Eric Dale Cakey and that his date of birth was September 28, 1975. When the officer asked how old he was, the young man said he was 17. This answer was not consistent with the birth date provided. When asked what he was doing at the residence the young man said he was going to visit a friend. After contacting the home's residents the officer determined the young man was not telling the truth. Officer Meyer handcuffed the young man until his true identity could be determined. The officer waited to determine whether Officer O'Brien and the passenger could identify this young man as the driver of the stolen vehicle.

Officer O'Brien and the passenger arrived approximately 45 minutes after the suspect had been contacted by Officer Meyer. The suspect was identified by both Officer O'Brien and the passenger as the driver of the stolen vehicle. At that time the suspect was read his Miranda rights and voluntarily waived them. He was later identified as Aaron Joseph Cunningham.

Mr. Cunningham was arrested and later charged with TMVWOP. Just prior to his jury trial, Mr. Cunningham filed a CrR 3.5 motion to dismiss statements made at the scene of his arrest. The motion was denied. Mr. Cunningham was found guilty as charged.

ISSUE AND RULING: Was Cunningham in Miranda "custody" (the functional equivalent of arrest) when the officer questioned him during a Terry stop? (ANSWER: No)

Result: Affirmance of Spokane County Superior Court conviction of Aaron Joseph Cunningham for taking a motor vehicle without permission; remanded for correction of sentencing error by the trial court.

ANALYSIS: (Excerpted from Court of Appeals opinion)

Mr. Cunningham contends the trial court erred in failing to suppress various statements he made to police officers on the night in question. The information Mr. Cunningham wanted to suppress was the false name and birth date, the fact he said he did not have an identification card, and the fact he admitted he had been previously stopped for a domestic violence violation in Tacoma.

The Fifth Amendment right against compelled self-incrimination requires police to inform a suspect of his or her Miranda rights before a custodial interrogation. That determination is based on how a reasonable person in the same circumstances would have perceived the situation. The Miranda exception applies when the interview or examination is: (1) custodial; (2) through interrogation; (3) by a state agent. In most cases, the term custodial refers to whether the suspect's freedom of movement was restricted at the time of questioning. An interrogation occurs when the investigating officer should have known his or her questioning would provoke an incriminating response.

Mr. Cunningham admits a routine investigative encounter that is supported by reasonable suspicion does not require Miranda warnings. For Miranda purposes, the fact that a suspect is not free to leave during the course of an investigative stop does not make the encounter comparable to a formal arrest. An investigative encounter, unlike a formal arrest, is not inherently coercive since the detention is presumptively temporary and brief, relatively less "police dominated," and does not lend itself to deceptive interrogation tactics. To qualify as a Terry stop, the detention must be "reasonably related in scope to the justification for [its] initiation."

Although it is unfortunate that Officer Meyer and the suspect had to wait approximately 45 minutes for Officer O'Brien to identify Mr. Cunningham as the suspect seen running from the stolen vehicle, the facts of this case indicate the detention of Mr. Cunningham was comparable to a limited Terry stop. It is clear that Officer Meyer's initial contact with Mr. Cunningham was a routine investigative encounter supported by reasonable suspicion. The officer testified that his questions to the suspect only involved an attempt to ascertain the man's true identity.

Mr. Cunningham asserts Officer Meyer should not have left him in handcuffs for approximately 45 minutes. He claims this action proves the investigation was more than a limited Terry stop. We disagree. Because the suspect would not cooperate with the officer in identifying himself, and because there was a reasonable suspicion this person was the man observed driving the stolen

vehicle, it was reasonable for the officer to believe the young man was at risk to again flee the scene of an investigative stop. These are the reasons given by Officer Meyer for handcuffing Mr. Cunningham, which was appropriate. The 45-minute wait was a result of Mr. Cunningham's refusal to stop and talk with Officer O'Brien at the scene of the original traffic stop. Mr. Cunningham should not now be heard to complain about a delay that was caused by his own actions.

Although he was not free to leave during the 45-minute delay, Officer Meyer testified Mr. Cunningham was not under formal arrest until after Officer O'Brien identified him as the driver of the stolen vehicle and read him his constitutional rights. The court's findings are supported by substantial evidence and the findings support the conclusions. Reviewing all the facts and circumstances from the record it is clear the trial court did not err when it denied Mr. Cunningham's motion to suppress statements made prior to his arrest.

[Citations omitted]

NO MIRANDA "CUSTODY" WHERE SUSPECT QUESTIONED IN HOSPITAL'S "FAMILY QUIET ROOM"; ALSO, CRIMINAL MISTREATMENT EVIDENCE SUFFICIENT

State v. Rotko; Marks, ___ Wn. App. ___, ___ P.3d ___ (Div. II, 2003) (2003 WL 1223451)

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

[Detective] Berg [was responding to a report of a possible criminal mistreatment of a child when she] went to Mary Bridge [Hospital], where she spoke with [David] Marks [a possible suspect]. The record does not show how Marks came to be at Mary Bridge. It shows only that when [Detective] Berg arrived there, she saw Marks standing outside the emergency room door. She told him that she 'needed to talk to him [and] asked him to wait until [she] had a chance to check on Joseph[.]' A few minutes later, she, another officer, and Marks went to a 'family quiet room,' where she asked 'about the care of the baby, the health of the baby, a lot of general questions about . . . how the baby was born and were there any problems, health problems, how the baby was being fed and . . . did they have any concerns about the baby, was the baby getting medical treatment[.]' Marks was 'very cooperative, very talkative, very responsive to [the] questions.' When Berg began 'to suspect that it was criminal mistreatment[.]' she read Marks his Miranda rights, and he signed a written waiver form. On the form, he indicated that he 'voluntarily wish[ed] to answer questions now' and was willing to speak with Berg.

On June 13, 2001, the court held a CrR 3.5 hearing to determine the admissibility of Marks' statements to [Detective] Berg. At the end of the hearing, the court ruled that the statements had been lawfully obtained, reasoning as follows:

I believe the issue argued to this court really is what generally was going on at the time that Detective Berg was first asking questions of Mr. Marks.

I believe that at that point she was doing an initial investigation, if the child has illnesses but is going through getting some kind of medical treatment. That's something she needed to know. If there was a doctor providing care, that's something she needed to know.

You have to get the basic facts before you know whether something criminal has occurred, and I believe she was in the investigatory process at the time she asked questions of Mr. Marks.

I believe with that being an investigation, that she was not required to give Miranda. In my view, it wasn't a custodial questioning, but it was investigation in a quiet family room down the hall in the hospital, and with that being the case, I don't believe that Miranda warnings were required.

With that being the case, there is no issue with regard to whether or not statements made after Miranda are or are not admissible unless there's an issue being raised now that there was some type of coercion or threats presented to Mr. Marks[.]

The trial court did not enter written findings until April 1, 2002. A bench trial began on June 19, 2001. Karen Brown, a lead certifier for the Women, Infants, and Children (WIC) Parkland program, testified that when Joseph was six weeks old, [Donna] Rotko brought him in for an appointment. Thereafter, however, Rotko failed to show up for six scheduled appointments.

Helen Marks testified that she visited Rotko and Marks every Thursday. She would bring 'food in the house every time.' Joseph's room was 'very dark' because the window was covered with a dark blanket. She rarely saw Joseph outside his room, and she told Rotko and Marks she was concerned about Joseph's health.

Dr. Waterman, a family practice resident, described Joseph's condition when he was admitted to the hospital on January 17, 2001. He weighed 4.2 kilograms (approximately 9.24 pounds), which was 'less than one percent of ideal body weight [at the age of eleven months].' He 'was emaciated, unable to lift his limbs, cachectic' and had 'a weak cry[.]' He had 'temporal wasting,' the 'back portion of his head was very flat[.]' and his abdomen was 'soft, fairly distended.' He had 'sparse course (sic) hair, sunken eyes, very pale, conjunctiva, which is the white part of the eye.' He had 'angular kyllosis bilaterally, which is skin breakdown at the corners of the mouth commonly seen in vitamin deficiencies. His skin had also broken down 'over the bony prominences particularly on the backs of his hips and the bony vertebrae in the midline of his back.' Overall, he suffered from 'significant malnutrition' and 'was at serious risk for death.'

Dr. Glenn Tripp, a pediatrician, described Joseph's development. At 12 months of age, Joseph was 'immobile, could not sit, could barely maintain head control . . . couldn't move up against gravity[.]' His head circumference was 42.5 centimeters substantially below the fifth percentile even though his head had been of normal size at birth. He had 'some mild cerebral atrophy, meaning his brain is smaller than expected.' Both the head size and brain size indicated a prolonged lack of nutrition, for '[y]ou don't see loss of head circumference or cerebral atrophy until the amount of nutrition is quite severe and has lasted for quite some time.' Three months later, he was still 'not at his age level, but [had] made remarkable gains[.]' showing that 'there is no problem with him growing. The problem was not being fed.'

Dr. Hart opined that Rotko 'did not suffer from any mental disorder which deprived her from knowing the substantial risk to the victim[.]' He also thought that neither her methamphetamine abuse nor her anxiety disorder had prevented her from knowing the risks to Joseph. Dr. Washburn, a defense witness, opined that Rotko 'lacked the capability of making a thorough assessment of not only the risk to the child, but the necessity of taking immediate action.'

The court found both Rotko and Marks guilty of first degree criminal mistreatment.

ISSUES AND RULINGS: 1) Under the totality of the circumstances, was defendant Marks in Miranda "custody" (the functional equivalent of arrest) when the detective questioned him in the hospital's "family quiet room?" (ANSWER: No) 2) Was sufficient evidence presented at trial to support convictions for criminal mistreatment in the first degree? (ANSWER: Yes)

Result: Affirmance of Pierce County Superior Court convictions and exceptional sentences of Donna Rotko and David Marks for criminal mistreatment in the first degree.

ANALYSIS: (Excerpted from Court of Appeals opinion)

1) Miranda custody

Miranda warnings are required before custodial interrogation. A defendant is in custody if his or her freedom of movement is restricted to "the degree associated with a formal arrest." Thus, not all police interviews are custodial. As the Supreme Court held in Oregon v. Mathiason, 429 U.S. 492 (1977):

Any interview of one suspected of a crime by a police officer will have coercive aspects to it, simply by virtue of the fact that the police officer is part of a law enforcement system which may ultimately cause the suspect to be charged with a crime. But police officers are not required to administer Miranda warnings to everyone whom they question. Nor is the requirement of warnings to be imposed simply because the questioning takes place in the station house, or because the questioned person is one whom the police suspect. Miranda warnings are required only where there has been such a restriction on a person's freedom as to render him 'in custody.' It was that sort of coercive environment to which Miranda by its terms was made applicable, and to which it is limited.

The record in this case does not show that Marks was in custody at the time of questioning. He was questioned in a 'family quiet room' at the hospital. He was not handcuffed or physically restrained in any way. He was not told that he could not leave, even though [Detective] Berg asked him to wait. According to [Detective] Berg's testimony, which the trial court was entitled to credit, she was still trying to gather the information she needed to make a decision on whether to restrain him, and she had not yet decided whether to do that. The trial court was entitled to find that Marks was not in custody, and to conclude that Miranda did not yet apply.

Sufficiency of evidence of criminal mistreatment

[T]he evidence is sufficient if a rational trier of fact viewing it in the light most favorable to the State could find (1) that Rotko caused great bodily harm to Joseph by withholding the basic necessities of life; and (2) that Rotko knew of and disregarded a substantial risk of such harm in such a way as to grossly deviate from conduct that a reasonable person would have exercised in the same situation.

Rotko contests the second proposition, but the evidence is amply sufficient to support it. Rotko knew about the nutritional needs of children, for her older child, Anthony, was thriving at age two. Being with Joseph every day, Rotko necessarily knew that he was not eating and had gained only three pounds in his first eleven months of life. Just by looking at him, she must have known that he needed medical care. A reasonable person certainly would have fed Joseph and obtained medical care for him, long before his condition became 'chronically critical.' Dr. Hart testified that she 'did not have diminished capacity to understand her child's needs in terms of nutrition, medical care and attention[,] and the trial court was entitled to credit his testimony. A rational trier of fact taking the evidence in the light most favorable to the State could easily have concluded that Rotko recklessly caused great bodily harm by withholding the necessities of life.

[Some citations and footnotes omitted]

WHERE OFFICER DECIDED DURING UNMIRANDIZED INTERROGATION THAT OFFICER WAS NOT GOING TO ALLOW SUSPECT TO LEAVE, BUT OFFICER DID NOT COMMUNICATE HIS DECISION TO SUSPECT, OFFICER'S UNCOMMUNICATED DECISION WAS NOT RELEVANT TO "CUSTODY" ISSUE; ALSO, TOTALITY OF CIRCUMSTANCES DID NOT ADD UP TO CUSTODY

State v. Solomon, 114 Wn. App. 781 (Div. III, 2002)

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

The State charged Mario Solomon with one count of unlawful imprisonment and one count of third degree assault. The State further alleged Ms. Tracy Vaughn was the victim of both offenses.

At the CrR 3.5 hearing, Spokane City Police Officer Shane Oien testified about four contacts with Mr. Solomon. The four contacts led to four statements that became the focus of the CrR 3.5 hearing.

First, in response to a call instigated by Mr. Solomon, Officer Oien contacted Mr. Solomon at his residence where he complained of being burglarized. Mr. Solomon told Officer Oien that Ms. Vaughn had burglarized him, he had detained her, and she had escaped. Officer Oien then spoke to Ms. Vaughn. **LED EDITORIAL NOTE: Ms. Vaughn told the officer that Solomon had been using drugs and had hit her with a stick.** Based upon Ms. Vaughn's information, [Officer Oien] was unsure what had transpired.

Officer Oien then spoke to Mr. Solomon a second time. Mr. Solomon admitted smoking crack all night and into that morning, but he still believed Ms. Vaughn had burglarized him, and that he had detained her in the bathroom. **LED EDITORIAL NOTE: It is the questioning in this second contact with**

defendant Solomon that is the focus of the defendant's Miranda-custody argument in this case.] Next, Officer Oien spoke with Seth Keturakat, another witness, prompting a third contact with Mr. Solomon.

In this third contact, Officer Oien tried to determine an entry point. Mr. Solomon's story "did not make much sense, and he appeared to be rambling on about a non-occurrence." Mr. Solomon admitted to the officer that he became paranoid while smoking crack "and was unsure of what had happened." Officer Oien asked Mr. Solomon if he had threatened Ms. Vaughn, and Mr. Solomon replied that he did not threaten her physically, just verbally to get information about the alleged burglary. Then, Officer Oien spoke again to Mr. Keturakat.

The fourth contact with Mr. Solomon followed to talk about a stick Mr. Solomon allegedly used to beat Ms. Vaughn. Before questioning, Officer Oien told Mr. Solomon he was going to advise him of his constitutional rights so he could ask "more in-depth questions about the incident." Officer Oien testified he read Mr. Solomon his rights from what the deputy prosecutor termed "a standard card." Officer Oien did not have the card at the CrR 3.5 hearing because it was not attached to his police report. According to Officer Oien, Mr. Solomon waived his constitutional rights and denied hitting Ms. Vaughn with the stick. Mr. Solomon did admit having a knife. Mr. Solomon refused the officer's request to search his residence for the stick. Officer Tami Scott testified that Officer Oien read Mr. Solomon his constitutional rights "per Miranda."

Officer Oien speculated on cross-examination that he probably would have kept Mr. Solomon from leaving the scene after he had talked with Ms. Vaughn about her alleged assault. The officer indicated his conversation with Ms. Vaughn "probably, changed my - my idea about the call I was on if he wants to leave after he was the victim of a burglary."

The trial court admitted Mr. Solomon's statements with the exception of his admission made during the third contact that he threatened Ms. Vaughn verbally, but not physically with a stick. The trial court later entered written conclusions of law and findings of fact.

The jury returned a verdict of guilty on the unlawful imprisonment count and not guilty on the assault count. The jury answered "no" on a special verdict form asking whether Mr. Solomon's use of force was lawful. The trial court imposed a high standard range sentence of three months.

ISSUES AND RULINGS: 1) Where an officer makes a subjective decision during an un-Mirandized interrogation of a suspect that the officer is not going to allow the suspect to leave, but the officer does not communicate that decision to the suspect, is the officer's uncommunicated decision relevant to the issue of whether the suspect was in "custody" for the purposes of Miranda? (ANSWER: No – the Miranda custody test is an objective test, so the officer's unexpressed intent is not relevant to the question of whether the suspect's action was curtailed to a degree associated with formal arrest); 2) Did the trial court err in finding "no custodial interrogation" under Miranda in the officer's first two contacts with the defendant? (ANSWER: No)

Result: Affirmance of Spokane County Superior Court conviction of Marion Andre Solomon for unlawful imprisonment.

ANALYSIS: (Excerpted from Court of Appeals opinion)

The issue is whether the trial court erred in not suppressing statements uttered during his second contact with Officer Oien. In essence, Mr. Solomon argues the Miranda warnings should have been given before the second contact.

Whether an officer should have given Miranda warnings to a defendant depends on whether the examination or questioning constituted (1) a custodial (2) interrogation (3) by a state agent. Here, the custodial aspect of Miranda is at issue.

A defendant is in custody for purposes of Miranda when his or her freedom of action is curtailed to a "degree associated with formal arrest."

The following exchange took place during the CrR 3.5 hearing:

[Defense Counsel:] After Ms. Vaughn told you that Mr. Solomon had been using drugs and had hit her with the stick several times leaving injuries, was Mr. Solomon free to pack up and leave or would you have stopped him to keep your investigation going?

[Officer Oien:] I probably would have kept him from leaving the scene.

Officer Oien's speculative testimony can be viewed as his opinion that if Mr. Solomon had decided to leave after having been confronted with Ms. Vaughn's allegations of assault, it would be considered flight and evidence of guilt. If those were the facts, Mr. Solomon would then have been detained. However, the flaw in Mr. Solomon's argument is that Mr. Solomon did not attempt to flee. Thus, Officer Oien's speculation is irrelevant to the issue of whether Mr. Solomon believed he would have been free to leave at that point. Therefore, the trial court did not err when permitting statements derived at the second contact.

Further, an unchallenged finding exists in connection with the second incident of contact, "Mr. Solomon was neither arrested nor coerced." This unchallenged finding clarifies to a considerable degree Officer Oien's unarticulated speculation about keeping Mr. Solomon at the scene.

Moreover, as noted, Officer Oien's unstated thoughts are irrelevant; a police officer's "unarticulated plan has no bearing on the question whether suspect was 'in custody' at a particular time." The relevant historical facts lend insight on how a reasonable person in Mr. Solomon's position would have understood his or her situation.

The trial court's unchallenged findings indicate no aspect that the officer's first two encounters with Mr. Solomon were coercive or constraining in nature notwithstanding the officer's unstated thoughts. In light of those circumstances, no reasonable person in Mr. Solomon's situation would have thought he or she was constrained in a manner consistent with formal arrest. Accordingly, the trial court did not err in admitting Mr. Solomon's earlier statements.

[Citations omitted]

IN CHALLENGE TO OFFICER'S BASIS FOR ARREST, DEFENDANT FAILS TO REBUT PRESUMPTION OF RELIABILITY OF DOL REPORT WHICH INDICATED THAT DEFENDANT HAD A SUSPENDED DRIVER'S LICENSE

State v. Gaddy, 114 Wn. App. 702 (Div. I, 2002)

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

Juliet Gaddy was stopped by a police officer after she failed to signal a right-hand turn of her automobile. When she was unable to produce a driver's license, the officer asked for her name and birthdate so that he could verify her driver's status on his mobile data terminal located in his police cruiser. She complied.

The officer learned that Gaddy's license was suspended. He and his partner returned to her vehicle and arrested her for driving with a suspended license. In a search of her vehicle incident to arrest, the officers discovered a substance they suspected was cocaine. Their suspicions proved correct and she was convicted of possession of cocaine.

ISSUES AND RULINGS: 1) In her challenge to the basis for her arrest, did the defendant successfully rebut the presumption of reliability of a DOL report that her driver's license was suspended? (ANSWER: No, rules a 2-1 majority); 2) Did the officers have probable cause to arrest Gaddy for DWLS? (ANSWER: Yes)

Result: Affirmance of King County Superior Court conviction of Juliet C. Gaddy for possession of cocaine.

Status: Petition for Supreme Court review filed by defendant; review of petition is pending.

ANALYSIS: (Excerpted from Court of Appeals opinion)

Gaddy ... argues that the officer did not have probable cause to arrest her for driving with a suspended license. She contends that the license status information the police received on their mobile data terminals from the DOL was not reliable.

Subject to narrow exceptions, an officer's warrantless seizure of a person is per se unreasonable. But police may arrest a person without a warrant if they have probable cause to believe that she is driving with a suspended license. Probable cause exists if there are sufficient facts and circumstances on reasonably trustworthy information that would cause a person of reasonable caution to believe that an offense has been committed. Only the probability of criminal activity is required to show probable cause, not a prima facie showing of it.

A determination of probable cause is made on the officer's knowledge at the time of the arrest. Because the facts supporting probable cause are often founded on hearsay and hastily garnered knowledge, it is sufficient if the information is reasonably trustworthy; it need not be absolutely accurate. Where police have made a warrantless arrest, the state bears the burden of proving the reliability of the information that formed the basis of probable cause. Information obtained after the arrest may not be used to retroactively justify it.

Under the "fellow officer" rule, an officer may rely on information contained in a police bulletin or "hot sheet" in effecting an arrest. But if the issuing agency does not have sufficient information to constitute probable cause, the arrest is illegal, regardless of the good faith of the arresting officer. Thus, it is not the "hot sheet" itself that supports probable cause, but the reliability of the original source of the information in the hot sheet.

In State v. Mance, [83 Wn. App. 539 (Div. II, 1996) **Nov 96 LED:14**] Division Two held that police did not have probable cause to arrest the driver of an auto that a police bulletin indicated was stolen. The court noted that probable cause initially existed because the victim had reported the auto stolen. A citizen informant, as opposed to a "professional" police informant or an anonymous tipster, is presumptively reliable. But the victim later canceled the report and, although the police department had a record of taking the call, at the time of the arrest it had not yet updated its bulletin. The court held that because the police failed to offer any evidence that the delay in updating its records was reasonable, probable cause did not exist to arrest the driver. It was not the error in the report that was dispositive, but only that the police had not demonstrated that their record keeping was reasonably reliable.

Here, the Legislature, through a comprehensive statutory scheme, has vested in the DOL the responsibility of administering all aspects of motor vehicle driver licensing. Moreover, in State v. Monson, 113 Wn.2d 833 (1989) our Supreme Court stated that:

The special trustworthiness of official written statements [from the DOL] is found in the declarant's official duty and the high probability that the duty to make an accurate report has been performed.

We hold that the information police officers receive on their mobile data terminals from the DOL is presumptively reliable.

Gaddy argues that she nevertheless rebutted the presumption of reliability by producing a report from the DOL evidencing that her license was issued two weeks prior to the date she was arrested. In Mance, the court held that the defendant had demonstrated the unreliability of police information by showing both that the stolen vehicle report was erroneous and that the police department had notice of it. But in [State v. Perea, 85 Wn. App. 339 (Div. II, 1997) **June 97 LED:02**] the court rejected a defendant's claim that DOL information was not reliable because it was a week old and it is possible for drivers licenses to be reinstated within a week. He did not show that his license was, in fact, reinstated. Under the common sense test for "staleness," the court held that the information was sufficiently reliable to support probable cause.

In this case, Gaddy did not produce evidence that her license was actually valid on the day of her arrest. Absent a showing that the information on which the police relied was in fact erroneous, Gaddy has failed to rebut the presumption that the DOL report was reasonably reliable. The officer had probable cause to arrest Gaddy.

We note that the officer's basis for probable cause included not only the license suspension report, but also the fact that Gaddy could not produce a driver's

license prior to her arrest and that her demeanor was uncooperative and flighty during the encounter. Taken collectively, substantial evidence supported the trial court's conclusion that probable cause existed for Gaddy's arrest.

[Footnotes and some citations omitted]

STATE WINS ON EXTRATERRITORIAL “FRESH PURSUIT” ISSUE

Vance v. DOL, ___ Wn. App. ___, 65 P.3d 668 (Div. I, 2003)

Facts:

The Court of Appeals describes as follows the facts that led to defendant's arrest for DUI, by a King County deputy sheriff who had followed him into Snohomish County before making a traffic stop:

A King County Sheriff's deputy observed a vehicle driven by Michael Vance traveling fast in the northbound lane of the 19500 block of Aurora Avenue. After clocking the vehicle at 53 miles per hour in a 40 mile per hour zone, the deputy followed the vehicle across the King County line and made a traffic stop at 205th and Aurora Avenue North, just within Snohomish County limits.

Upon contact with Vance, the deputy immediately smelled alcohol and observed that Vance had bloodshot, glassy eyes and slurred, deliberate speech. Based on these impressions and Vance's admission to having consumed two or three alcoholic drinks, the deputy requested that the Washington State Patrol respond to the scene. A State Patrol sergeant arrived and likewise observed that Vance's eyes were watery and bloodshot and his face flushed. Vance again acknowledged drinking alcohol ... The State Patrol sergeant placed Vance under arrest and advised him of his constitutional rights.

Proceedings below:

Michael Vance's driver's license was suspended by DOL because he refused a breath test after he was arrested for DUI. An administrative hearing officer affirmed the suspension, and a superior court judge affirmed that decision.

ISSUE AND RULING: Was the officer authorized under the “fresh pursuit” provisions of RCW 10.93.120(2) even if Vance did not know that he was being pursued by the officer as he went over the county line? (ANSWER: Yes)

Result: Affirmance of King County Superior Court decision affirming DOL's suspension of Michael Vance's driver's license.

ANALYSIS: (Excerpted from Court of Appeals opinion)

Vance contends that the King County Sheriff's deputy had no jurisdiction to stop him in Snohomish County. Police officers are allowed to enforce traffic laws throughout the "territorial bounds of the state," RCW 10.93.070, provided the officer is in "fresh pursuit" as defined by RCW 10.93.120(2):

The term "fresh pursuit," as used in this chapter, includes, without limitation, fresh pursuit as defined by the common law. Fresh pursuit does not necessarily imply immediate pursuit, but pursuit without unreasonable delay.

(Emphasis added).

Vance contends his stop does not meet the requirements of fresh pursuit. He argues that the common law definition necessitates, among other criteria, "that the individual sought must be attempting to escape to avoid arrest or at least know he is being pursued." See City of Wenatchee v. Durham, 43 Wn. App. 547, 550-52, 718 P.2d 819 (1986) (illegal arrest where there was no evidence that suspect was attempting to flee the jurisdiction to avoid arrest or that he knew he was being pursued). But RCW 10.93, which took effect after Wenatchee, does not limit fresh pursuit to the common law definition. The statute was enacted with the intent that

current artificial barriers to mutual aid and cooperative enforcement of the laws among general authority local, state and federal agencies be modified pursuant to this chapter. This chapter shall be liberally construed to effectuate the intent of the legislature to modify current restrictions upon the limited territorial and enforcement authority of general authority peace officers

RCW 10.93.001.

Under the statute, "courts are not limited by the common law definition, but may consider the Legislature's overall intent to use practical considerations in deciding whether a particular arrest across jurisdictional lines was reasonable." City of Tacoma v. Durham, 95 Wn. App. 876, 881, 978 P.2d 514 (1999) **Sept 99 LED:11** (where police observed driver weaving and running a red light, out-of-jurisdiction arrest after pursuit was lawful). During a fresh pursuit, the driver "need not know he is being pursued." Tacoma. Given the inherent mobility of a driving offense, the fresh pursuit doctrine is a necessary means of cooperatively enforcing traffic laws to ensure public safety. Tacoma.

Vance was speeding. Police therefore had a reasonable belief that he posed a public danger. The King County Sheriff's deputy pursued Vance's vehicle, without unreasonable delay, across a jurisdictional boundary within an urban area. Vance's stop occurred as a result of fresh pursuit and was lawful.

[Some citations omitted]

STATE LOSES ON ISSUES OF 1) "AUTOMATIC STANDING;" 2) IMPOUND AUTHORITY OVER 5TH WHEEL TRAILER; 3) "COMMUNITY CARETAKING;" AND 4) IMPLIED CONSENT BY VIRTUE OF REPORT OF STOLEN VEHICLE

State v. Kypreos, 115 Wn. App. 207 (Div. I, 2003)

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

Snohomish County Sheriff deputies, who were looking for a stolen utility trailer and a woman named Stephanie Smithson who they believed was involved in drug activity, went to the property of Albert Odegard. They spoke with Odegard and his daughter Jamie about Smithson and the missing utility trailer.

While there, the deputies noticed a fifth wheel trailer and radioed in its description. They were advised that the registered owner had reported the trailer stolen. She reported that the trailer had served as her residence, and specifically requested that the trailer not be impounded. The deputies learned that Jamie had granted Smithson permission to park the trailer on her father's property.

Odegard told the deputies that Smithson and her boyfriend Kypreos had been living in the trailer. He said he wanted the trailer and all of the people associated with it to be removed from the 'property because of alleged drug activity associated with it. Jamie explained that Smithson had told her that she was buying the trailer, but did not have title yet because it was being mailed to her.

Upon learning that the trailer was stolen, one of the deputies knocked on the door of the trailer and entered. When he did not find anyone in the living area of the trailer, he drew his gun and opened the sliding door leading to the sleeping area. There, he discovered Kypreos in the bed. Once Kypreos was removed from the trailer and placed in handcuffs, the deputy searched the sleeping quarters and discovered a loaded .45 caliber automatic handgun in the bed.

Kypreos expressed surprise when he was told that the trailer was stolen. He stated that he had seen the bill of sale, and that it could not possibly be stolen. Kypreos was advised to leave the premises. The trailer was left on Odegard's property. Kypreos was subsequently charged with unlawful possession of the handgun.

Kypreos moved to suppress the evidence of the handgun, but the trial court concluded that Kypreos did not have standing to challenge the search. Kypreos was then found guilty at a stipulated trial of unlawful possession of a firearm in the first degree.

ISSUES AND RULINGS: 1) Does defendant have automatic standing to challenge the search of the trailer? (ANSWER: Yes); 2) Was the detached trailer a vehicle that was located on public property such that any more relaxed car search rules apply? (ANSWER: No); 3) Does the "community caretaking function" of police justify the search of the trailer? (ANSWER: No); 4) Does the mere fact that the trailer's owner had reported it stolen justify the trailer-search under an implied consent-to-search theory? (ANSWER: No)

Result: Reversal of Snohomish County Superior Court conviction of Seth Kypreos for unlawful possession of a firearm in the first degree. **NOTE: This is the second time that the Court of Appeals has addressed this case. This opinion follows reconsideration and replaces the Court's earlier opinion in the May 2002 LED.**

ANALYSIS: (Excerpted from Court of Appeals opinion)

1) Automatic standing

We first consider whether Kypreos has standing to challenge the search of the trailer. He argues that his standing is automatic because (1) the offense with which he is charged involves possession as an essential element of the offense; and (2) he was in possession of the contraband at the time of the contested search or seizure. In contrast, the State argues the application of automatic standing is proper only where the defendant was legitimately on the premises. In light of State v. Jones, 146 Wn.2d 328 (2002) **July 02 LED:20**, we conclude that Kypreos has automatic standing to challenge the search.

While the doctrine of automatic standing has been abandoned by the U.S. Supreme Court, and has been the subject of controversy in our courts, it "still maintains a presence in Washington." In Jones the Washington Supreme Court held that, "to assert automatic standing a defendant (1) must be charged with an

offense that involves possession as an essential element; and (2) must be in possession of the subject matter at the time of the search or seizure." Further there must be a direct relationship between the challenged police action and the evidence used against the defendant.

Turning to the second requirement...Kypreos had constructive possession of the firearm because he exercised control over the trailer. He claimed that he was the overnight guest of the person who owned the trailer. Further, he was in the trailer at the time of the search and was found under the covers of the bed where the firearm was located.

There is also a direct relationship between the "fruits" of the search and the challenged police action. The police entered the trailer in search of evidence, and found Kypreos. A second search yielded the "fruits" of the search, a handgun. Kypreos has automatic standing to challenge the search.

2) For search law purposes, was the detached trailer is a "vehicle" under the circumstances

[T]he deputies did not impound the trailer, nor does the trailer qualify as a vehicle.

The home is a "highly private place" and "receives heightened constitutional protection." . . . [Article I, section 7 affords greater protection from an officer's search of a home than the Fourth Amendment].

The general rule is that:

When a home is located in a vehicle, in such a way as to make it readily accessible from the passenger compartment, the safety of law enforcement officers and the need for a bright-line rule militate against prohibiting officers from searching a sleeping area which is readily accessible from the passenger compartment.

. . . Here, the trailer is not a tractor-trailer. It is not a motor home or Winnebago as in State v. Vrieling, 144 Wn.2d 489 (2001) **Oct 01 LED:02**. Nor was the trailer found on a public highway or in a public place. The trailer was not attached to any motorized vehicle. The fact that there was no motorized vehicle there with the proper receptacle attached made the trailer not readily mobile. Accordingly, the immobile trailer is more akin to a dwelling for search and seizure analysis and not subject to the automobile exception.

3) "Community caretaking function"

We also reject the community caretaking function argument. The U.S. Supreme Court first announced the "community caretaking function" exception in Cady v. Dombrowski, 413 U.S. 422. The Washington Supreme Court first cited Cady in State v. Houser, 95 Wn.2d 143, 622 P.2d 1218 (1980), an automobile impoundment case. Houser rejected the community caretaking exception theory under the facts there because the State failed to show the necessity, i.e., that the vehicle threatened public safety or convenience. Here, the State argues that although the police did not impound the trailer, there was ample concern that the trailer could be subject to future vandalism and theft. There is no evidence in the

record to support this assertion, nor is there evidence that the trailer threatened public safety. Moreover, the community caretaking function must be totally divorced from a criminal investigation. Here, the detectives were obviously engaged in a criminal investigation.

4) Implied consent to search

Finally, we do not agree with the State that implied consent to search the trailer was given by the registered owner simply by virtue of reporting it stolen. The owner had instructed the police not to impound the trailer, and the trailer was left on private property for the owner to retrieve it. **LED EDITORIAL COMMENT: This ruling is fact-specific. Police can obtain continuing consent to search from victims of thefts. The Kypreos Court merely holds that such consent cannot be inferred from a mere report of a theft, particularly where, as here, the victim instructed the police not to impound the stolen item.**

There was no exigent circumstances which obviated the need to obtain a search warrant. Based on the property owner's statements, a warrant could have readily been obtained. We conclude that the search cannot withstand constitutional scrutiny.

[Some text, citations and footnotes deleted]

“REASONABLE SUSPICION” – DWLS STOP UPHELD BASED ON OFFICER’S KNOWLEDGE GAINED IN CONTACT WITH SUSPECT FOUR DAYS EARLIER

State v. Marcum, ___ Wn. App. ___, 66 P.3d 690 (Div. III, 2003)

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

Kennewick Police Officer Wayne Meyer encountered Mr. Marcum and a particular blue-green Subaru three times in July 2000. First, Mr. Marcum was a passenger in the Subaru when Officer Meyer arrested the driver. A couple of days later, Mr. Marcum and the Subaru were the object of an assault investigation. Officer Meyer spotted Mr. Marcum and the Subaru at a Kennewick address and talked to him. Officer Meyer ran a license check and learned that Mr. Marcus's driver's license was suspended. Mr. Marcum said he had borrowed the Subaru. Officer Meyer warned Mr. Marcum that he would be arrested if he were caught driving.

A week after this, the Subaru passed Officer Meyer on the street at about two in the morning. He recognized the license number and could see that the driver was the sole occupant. He suspected it was Mr. Marcum and followed the car. Officer Meyer could see that the driver looked like Mr. Marcum as he got closer. He was certain enough to call for backup before stopping the car. Officer Meyer's identification of Mr. Marcum was not 100 percent certain until Mr. Marcum stepped from the car. But once Mr. Marcum got out of the car, Officer Meyer positively identified him.

Officer Meyer handcuffed Mr. Marcum. He called in a license check to confirm that Mr. Marcum's license was suspended. It was. And he arrested Mr. Marcum. Police then impounded the car and searched it. They found a loaded .45 caliber handgun, a radio scanner, cell phones and pagers, and methamphetamine.

The State charged Mr. Marcum by information with possession of a controlled substance and unlawful possession of a firearm. Mr. Marcum moved to suppress everything seized from the car. The court found that Officer Meyer knew Mr. Marcum by sight, knew his license was suspended, and knew he was associated with the Subaru. Officer Meyer could then develop a reasonable, articulable suspicion that the sole occupant of the car was driving with a suspended license. The court concluded that this was a sufficient basis for the stop, and denied the motion to suppress.

A jury convicted Mr. Marcum of one count of possession of a controlled substance, methamphetamine, and one count of unlawful possession of a firearm.

ISSUE AND RULING: Did the officer have reasonable suspicion to stop Marcum based on information that the officer had gained in his two contacts with Marcum the week before, including the information learned four days earlier that Marcum's driver's license was suspended? (ANSWER: Yes)

Result: Affirmance of Benton County Superior Court conviction of Jared Marcum for unlawful possession of methamphetamine; in a part of the decision not addressed in this LED entry, the Court of Appeals reverses Marcum's conviction for unlawful possession of a firearm based on defects in the charging document.

ANALYSIS: (Excerpted from Court of Appeals opinion)

Police may conduct a brief, warrantless stop to investigate a reasonable suspicion of criminal activity based on articulable facts. Terry v. Ohio, 392 U.S. 1, (1968); State v. O'Cain, 108 Wn. App. 542 (2001) **Jan 02 LED:13**. The State claims that both the investigatory stop and the arrest fall within this exception. But Mr. Marcum says this was not reasonable suspicion. He asserts it was a hunch, pure and simple. The case law in this state does not support his position.

State v. O'Cain illustrates a stop based on no more than a hunch. There, an officer on drug detail patrolled a drug neighborhood. He saw people standing next to a car in a 7-Eleven parking lot. He had a hunch (a hunch based on experience but nonetheless a hunch) that they were buying and selling drugs. He called in the vehicle license number and drove on. Dispatch responded that the car had been reported stolen. Based on this, he called for backup, returned to the parking lot, and seized the vehicle and its occupants. The court held that the officer's initial suspicion was based on no more than a hunch. The stolen vehicle dispatch was the only factual basis for the arrest. And standing alone, an unverified stolen vehicle report is no better than an anonymous tip. It does not provide probable cause to arrest. And a conclusory allegation obtained from an unverified computer compilation is not, by itself, sufficient.

The facts of O'Cain are distinguishable in several respects. Most notably, Officer Meyer received the dispatch report of Mr. Marcum's license status *after* the stop. At the hearing, Mr. Marcum did not challenge the reliability of the dispatch report of his license suspension. His only complaint was that Officer Meyer stopped him on a mere hunch.

Officer Meyer did not need probable cause to arrest in order to effect a lawful stop. He needed only a reasonable suspicion based on specific articulable facts

that a law was being broken. And for that, Officer Meyer relied on his personal knowledge. He knew Mr. Marcum by sight. And he knew Mr. Marcum's license was suspended. He had talked to Mr. Marcum twice in the previous week. Both times Mr. Marcum had some connection with the blue-green Subaru. And he was able to identify the driver with sufficient certainty to stop him. This is more than a hunch. It was enough to stop the Subaru and confirm the identity and license status of its driver.

Mr. Marcum argues that he might have obtained a driver's license during the four days since his last contact with Officer Meyer. Again, under recent case law, this does not negate otherwise reasonable suspicion. In State v. Perea, a license check seven days before the stop was sufficient, not only for articulable suspicion of driving without a license, but also for probable cause to arrest. State v. Perea, 85 Wn. App. 339 (1997) **June 97 LED:02**. Here, four-day-old information was fresh enough to provide a reasonable suspicion for a brief stop to find out how things stood. The court correctly concluded that the factual basis for the stop was a reasonable suspicion based on articulable facts and ruled that the factual basis was met.

Mr. Marcum next complains that the dispatcher's confirmation of a suspended license was not enough to support the stop. But the radio status check took place after the stop, and after Mr. Marcum got out of the car and was handcuffed. And, of course, Officer Meyer's positive identification of Mr. Marcum after the stop together with the dispatch report of a suspended license is probable cause to arrest. RCW 10.31.100(3)(e) authorizes a warrantless custodial arrest for driving with a suspended license. State v. Reding, 119 Wn.2d 685 (1992) **Dec 92 LED:17**. The factual basis for this warrantless arrest was *probable cause*.

Both the stop and the arrest were, then, lawful. The search of the car was, therefore, also lawful. So the court correctly denied the motion to suppress evidence found in the car.

[Some citations omitted]

BRIEF NOTE FROM THE WASHINGTON STATE COURT OF APPEALS

(-) CI-BASED PROBABLE CAUSE FOUND IN REJECTION OF METH DEFENDANT'S CHALLENGE TO PC SUPPORT FOR SEARCH WARRANT – In State v. Shaver, ___ Wn. App. ___, 65 P.3d 688 (Div. III, 2003), the Court of Appeals upholds a search warrant that was issued primarily in reliance on a confidential informant's report. The Shaver Court describes the affidavit and the suppression judge's findings of fact and conclusions of law (along with the appellate court's approval of the suppression judge's ruling) as follows:

The trial court determined that the affidavit in support of the application for the search warrant written and submitted by the investigating officer, included a handwritten statement signed by the confidential informant (CI), which relayed critical information to the officer investigating the drug crime that led to Mr. Shaver's arrest. This investigating officer's affidavit included his basis of knowledge surrounding the drug crime at issue and the reasons the CI's information was credible. These are the two prongs of the Aguilar-Spinelli test that must be satisfied prior to the search warrant issuing.

The court made several findings regarding the affidavit in support of the search warrant. They include:

- (1) the named CI initially contacted the investigating officer to report the alleged methamphetamine operation at the home of Robert Estes;
- (2) the officer was told the CI wanted to rid the community of drug dealers and also hoped for a favorable recommendation to the prosecutor regarding an outstanding criminal charge;
- (3) the investigating officer had been investigating the Estes household regarding illegal drug activity for many years prior to being contacted by the CI and had personal knowledge of high foot and automobile traffic in and out of the Estes residence and knew from license plate numbers that many visitors to the residence were known drug users;
- (4) in response to the investigating officer's directive, the CI went to the Estes home;
- (5) while at the Estes home the CI learned that Mr. Shaver was presently cooking meth and was teaching Mr. Estes to do so as well;
- (6) the comments Mr. Estes made to the CI were statements against penal interests, which made the statements more credible;
- (7) the investigating officer knew the CI for several years and knew the CI had been involved in the drug sub-culture in the past; and
- (8) the CI had previously provided reliable information to the investigating officer. The court then concluded that, taken as a whole, the information presented in the officer's affidavit and the CI's personal, signed statement provided sufficient compliance with the two-prong test of Aguilar-Spinelli.

As a result, it determined there was sufficient probable cause for the search warrant to issue and denied Mr. Shaver's motion to suppress evidence. The findings support the court's conclusion. The trial court did not abuse its discretion when it denied Mr. Shaver's CrR 3.6 motion to suppress.

Result: Reversal (on ineffective-assistance-of-counsel issue not addressed in this **LED** entry) of the Klickitat County Superior Court convictions of James Edwin Shaver on a charge of manufacturing methamphetamine and on several other meth-related charges; case remanded for new trial.

NEXT MONTH

The July 2003 **LED** will include Part 3 of our "2003 Legislative Update." The July **LED** will also include an entry digesting the May 5, 2003 "per curiam" (i.e., a brief and unanimous opinion without extended discussion) decision of the U.S. Supreme Court in Kaupp v. Texas, where the Supreme Court held that police violated a suspect's Fourth Amendment rights when, without probable cause to arrest him, they forcibly took him from his home to the police station for questioning.

INTERNET ACCESS TO COURT RULES & DECISIONS, TO RCW'S, AND TO WAC RULES

The Washington Office of the Administrator for the Courts maintains a web site with appellate court information, including recent court opinions by the Court of Appeals and State Supreme Court. The address is [<http://www.courts.wa.gov/>]. Decisions issued in the preceding 90 days may be accessed by entering search terms, and decisions issued in the preceding 14 days may be more simply accessed through a separate link clearly designated. A website at [<http://legalwa.org/>] includes all Washington Court of Appeals opinions, as well as Washington State Supreme Court opinions from 1939 to the present. The site also includes links to the full text of the RCW, WAC, and many Washington city and county municipal codes (the site is accessible directly at the address above or via a link on the Washington Courts' website). Washington Rules of Court (including rules for appellate courts, superior courts, and courts of limited jurisdiction) are accessible via links on the Courts' website or by going directly to [<http://www.courts.wa.gov/rules>].

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 many significant opinions of the Court issued before 1990.

Easy access to relatively current Washington state agency administrative rules (including DOL rules in Title 308 WAC, WSP equipment rules at Title 204 WAC and State Toxicologist rules at WAC 448-15), as well as all RCW's current through January 2003, is at [<http://slc.leg.wa.gov/>]. Information about bills filed in 2003 Washington Legislature is at the same address -- look under "Washington State Legislature," "bill info," "house bill information/senate bill information," and use bill numbers to access information. Access to the "Washington State Register" for the most recent WAC amendments is at [<http://slc.leg.wa.gov/wsr/register.htm>]. In addition, a wide range of state government information can be accessed at [<http://access.wa.gov>]. The address for the Criminal Justice Training Commission's home page is [<http://www.cjtc.state.wa.us>], while the address for the Attorney General's Office home page is [<http://www.wa/ago>].

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 [ledemail@cjtc.state.wa.us]. **LED** editorial commentary and analysis of statutes and court decisions express the thinking of the writers and do 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 via a link on the Commission's Internet Home Page at: [<http://www.cjtc.state.wa.us>].