



Law Enforcement

October 2007

Digest

OCTOBER 2007 LED TABLE OF CONTENTS

BRIEF NOTES FROM THE NINTH CIRCUIT, U.S. COURT OF APPEALS..... 2

STRIP SEARCH OF MERE TRESPASS ARRESTEE AT STATION HOUSE EXPOSES OFFICERS AND DEPARTMENT TO CIVIL RIGHTS LIABILITY BASED ON ALLEGED FOURTH AMENDMENT VIOLATIONS
Edgerly v. City and County of San Francisco, ___ F.3d ___ (9th Cir. 2007) 2

POLICE LIABILITY FOR MALICIOUS PROSECUTION MAY RESULT FROM INTENTIONAL OR RECKLESS MATERIALLY FALSE STATEMENTS OR OMISSIONS OF MATERIAL FACTS FROM POLICE REPORTS
Blankenhorn v. City of Orange (California), 485 F.3d 463 (9th Cir. 2007) 3

BRADY DISCLOSURE RULE VIOLATED AND NEW TRIAL REQUIRED: FBI AGENT SHOULD HAVE PROVIDED EXCULPATORY INVESTIGATIVE INFORMATION TO U.S. ATTORNEY WHO COULD HAVE THEN PROVIDED THE INFORMATION TO THE BANK ROBBERY DEFENDANT - - THE INVESTIGATIVE INFORMATION WAS THAT A SIMILARLY DESCRIBED PERSON (FIVE-FEET TALL, HISPANIC, WOMAN, AND ACNE COMPLEXION) HAD ROBBED VICINITY BANKS WHILE DEFENDANT WAS IN JAIL AWAITING TRIAL
U.S. v. Jernigan, 492 F.3d 1050 (2007) 5

WASHINGTON STATE SUPREME COURT 6

INDEPENDENT CONSTITUTIONAL GROUNDS RULING ALLOWS WASHINGTON OFFICERS TO FORCE ENTRY TO ARREST ON MISDEMEANOR WARRANT, BUT SUCH ENTRIES WILL BE REVIEWED FOR GENERALIZED REASONABLENESS AND PRETEXT; ALSO, THE PERSON NAMED ON THE WARRANT MUST ACTUALLY BE PRESENT AT THE TIME OF ENTRY
State v. Hatchie, ___ Wn.2d ___, ___ P.3d ___, 2007 WL 2501489 (2007) 6

BRIEF NOTES FROM THE WASHINGTON STATE SUPREME COURT 9

SIXTH AMENDMENT RIGHT TO COUNSEL HELD VIOLATED BY CCO’S POST-CONVICTION, PRE-SENTENCING INTERVIEW
State v. Everybodytalksabout, ___ Wn.2d ___, ___ P.3d ___, 2007 WL 2501359 (2007) 9

TAGGERS’ PRIOR ACTS OF GRAFFITI WERE SIGNATURE CRIMES OF MALICIOUS MISCHIEF (MO EVIDENCE) AND THEREFORE ADMISSIBLE IN SUBSEQUENT MALICIOUS MISCHIEF PROSECUTIONS FOR FURTHER GRAFFITI
State v. Foxhoven and *State v. Sanderson*, ___ Wn.2d ___, 163 P.3d 786 (2007) 9

DOCTRINE OF “FORFEITURE BY WRONGDOING” PRECLUDES DEFENDANT FROM RAISING HIS SIXTH AMENDMENT RIGHT TO CONFRONTATION REGARDING HEARSAY FROM DECEASED VICTIM THAT DEFENDANT MURDERED
State v. Mason, ___ Wn.2d ___, 162 P.3d 396 (2007) 10

CRIMINAL DISCOVERY RULE - - DEFENDANTS CHARGED WITH POSSESSION OF CHILD PORNOGRAPHY ARE ENTITLED THROUGH THEIR ATTORNEYS, TO OBTAIN COPIES OF PHOTOS AND VIDEOTAPES PLUS MIRROR IMAGE OF HARD DRIVE OF COMPUTER

State v. Boyd, 160 Wn.2d 424 (2007) 10

WASHINGTON STATE COURT OF APPEALS 11

PRESENT-COHABITANTS-MUTUAL-CONSENT RULE HELD NOT APPLICABLE WHERE TENANT WHO WAS SOLE PERSON WHO SIGNED LEASE CONSENTED TO SEARCH AND WHERE HOUSEGUEST WAS CHALLENGING SEARCH OF ANOTHER GUEST’S BEDROOM; ALSO, MERE PENDING OF EVICTION PROCESS DID NOT DESTROY TENANT’S CONSENT AUTHORITY

State v. Haapala, ___ Wn. App. ___, 161 P.3d 436 (Div. II, 2007) 11

WHERE LITTERING WAS MISDEMEANOR UNDER OLYMPIA ORDINANCE, ARREST ON PROBABLE CAUSE JUSTIFIED SEARCH INCIDENT TO ARREST OF VEHICLE THAT HAD BEEN OCCUPIED BY LITTERER 1) AT TIME OF OFFENSE AND 2) JUST PRIOR TO ARREST

State v. Kirwin, 137 Wn. App. 387 (Div. II, 2007) 14

“STRONG CHEMICAL SMELL” FROM FIFTH WHEEL TRAILER - - EMERGENCY EXCEPTION TO SEARCH WARRANT REQUIREMENT HELD NOT TO APPLY WHERE THERE WAS NO IMMINENT THREAT OF SUBSTANTIAL HARM TO PERSON OR PROPERTY

State v. Leffler, ___ Wn. App. ___, ___ P.3d ___, 2007 WL 2380774 (Div. II, 2007) 16

THIEF IN POSSESSION OF 78 BOXES OF COLD MEDICINE AND 64 LITHIUM BATTERIES CAN BE PROSECUTED FOR POSSESSING PSEUDOEPHEDRINE WITH INTENT TO MANUFACTURE METHAMPHETAMINE

State v. Missieur, ___ Wn. App. ___, ___ P.3d ___, 2007 WL 2353380 (Div. I, 2007) 19

NO DRIVER’S LICENSE SUSPENSION FOR FELONY USE OF CAR UNDER RCW 46.20.285(4) WHERE COCAINE WAS ON THE PERSON OF DUI DRIVER

State v. Wayne, 134 Wn. App. 873 (Div. III, 2007) 22

BRIEF NOTES FROM THE WASHINGTON STATE COURT OF APPEALS 24

PREMEDITATION EVIDENCE HELD SUFFICIENT TO SUPPORT ATTEMPTED FIRST DEGREE MURDER CONVICTION FOR SHOOTING THROUGH WINDOW AT WIFE, AND THE COMMON LAW DOCTRINE OF “TRANSFERRED INTENT” SUPPORTS DEFENDANT’S CONVICTIONS FOR ASSAULTING THE CHILDREN WHO WERE IN THE ROOM WITH HIS WIFE WHEN HE SHOT AT HER

In State v. Elmi, ___ Wn. App. ___, 156 P.3d 281 (Div. I, 2007) 24

PIT BULL THAT ATTACKED POLICE OFFICER WAS A “DEADLY WEAPON” FOR PURPOSES OF SECOND DEGREE ASSAULT STATUTE

State v. Hoeldt, ___ Wn. App. ___, 160 P.3d 55 (Div. II, 2007) 24

BRIEF NOTES FROM THE NINTH CIRCUIT, U.S. COURT OF APPEALS

(1) STRIP SEARCH OF MERE TRESPASS ARRESTEE AT STATION HOUSE EXPOSES OFFICERS AND DEPARTMENT TO CIVIL RIGHTS LIABILITY BASED ON ALLEGED FOURTH AMENDMENT VIOLATIONS – In Edgerly v. City and County of San Francisco, ___ F.3d ___ (9th Cir. 2007) (decision filed July 17, 2007), the Ninth Circuit reverses a U.S. District Court judge’s rulings dismissing a civil lawsuit by an arrestee who alleged that, after he was taken to the police station following his arrest for trespass, officers made him pull down his pants, and they looked inside his boxer shorts to see if drugs were stashed there. **NOTE:** The arresting officers had a different story from the arrestee, but this appeal was by the arrestee

from the District Court judge's dismissal of his lawsuit, so the appellate court was required to accept as true the arrestee's allegations.

The Edgerly Court rules that the arrest for trespass was not supported by probable cause under the unusual definition of "trespass" under California law. Furthermore, the Court rules, the strip search, under the facts alleged by the arrestee, was not justified because the decision to conduct a strip search arrest was based only (1) on the officers' suspicions regarding the minor offense of trespass, together with (2) one officer's knowledge of the suspect's prior arrest for a drug crime.

On the question of what constitutes a "strip search" under the Fourth Amendment, the Ninth Circuit opinion explains:

We have also held that visually inspecting a person's naked body, even without a "visual examination of body cavities," constitutes a strip search. *[Court's footnote: Although we have not expressly decided whether requiring an arrestee to expose only his or her undergarments constitutes a strip search, we have held in the border search context that such a search "tend [s] toward [a] strip search in that if conducted in public it can be said to result in embarrassment to one of reasonable sensibilities." United States v. Palmer, 575 F.2d 721, 723 (9th Cir.1978). We further held that, although it is "hardly feasible to enunciate a clear and simple standard for each possible degree of intrusiveness," such a search requires "suspicion ... founded on facts specifically relating to the person to be searched, and [that] the search [be] no more intrusive than necessary to obtain the truth respecting the suspicious circumstances."]* Additionally, California's reasonable definition of a "strip search" informs our Fourth Amendment analysis in the instant case. California Penal Code section 4030(c) expressly defines a strip search as a "search which requires a person to remove or arrange some or all of his or her clothing so as to permit a visual inspection of the underclothing, breasts, buttocks, or genitalia of such person."

Viewing the evidence in light most favorable to Edgerly, a reasonable jury could find that the Officers strip searched him. According to Edgerly's trial testimony, Officer Goff required him to arrange his clothing so as to permit a visual inspection of his undergarments, by asking him to pull his pants down to his ankles. Further, Edgerly's testimony that Goff looked inside his boxer shorts permits a reasonable inference that Goff visually inspected his buttocks or genitalia. Therefore, if the jury credits Edgerly's testimony, the Officers' search was a strip search that required reasonable suspicion.

The Court holds that a strip search is not reasonable under these circumstances. As noted, the Court also explains that the officers were not entitled to qualified immunity because it was not reasonable for the officers to believe that the search method used was justified. The Court further holds that the police department itself can be held liable on the rationale that an agency policy or custom was the driving force behind the officers' unlawful conduct. The Ninth Circuit explains this latter point as follows:

In his deposition, [Sergeant] Schiff testified that he followed "department policy" in requiring officers to request authorization only for full body cavity searches and not for searches that constituted strip searches under California Penal Code section 4030(c). Further, the Officers testified at their depositions that requiring an arrestee to remove his pants to reveal his underclothing does not constitute a

strip search or require supervisor approval, and that they had conducted hundreds of such searches. Taking these facts in the light most favorable to Edgerly, a reasonable jury could find that: (1) the City had implemented a policy permitting unreasonable searches; (2) the Officers were aware of this policy; and (3) the policy was the moving force behind the Officers' violation of Edgerly's constitutional rights.

Result: Reversal of U.S. District Court dismissal order and remand of case for trial.

(2) POLICE LIABILITY FOR MALICIOUS PROSECUTION MAY RESULT FROM INTENTIONAL OR RECKLESS MATERIALLY FALSE STATEMENTS OR OMISSIONS OF MATERIAL FACTS FROM POLICE REPORTS – In Blankenhorn v. City of Orange (California), 485 F.3d 463 (9th Cir. 2007) (decision filed May 8, 2007), the Court of Appeals addresses a civil rights case in which an important part of the evidence was a citizen's videotape made of an arrest at a mall. The appeal presented a variety of issues. Gary Blankenhorn, the subject of a trespass arrest at a shopping mall sued police in federal court 1) for unlawful arrest for trespass; 2) for excessive force (challenging (a) a gang tackle takedown, (b) officers' throwing of punches during the takedown, and (c) their use of hobble restraints to secure him); and 3) for malicious prosecution. This **LED** entry addresses only the malicious prosecution ruling.

The Blankenhorn Court analyzes the malicious prosecution issue in part as follows:

Blankenhorn seeks damages for the three months he spent incarcerated after the district attorney filed charges against him. A police officer who maliciously or recklessly makes false reports to the prosecutor may be held liable for damages incurred as a proximate result of those reports.

...

Defendants claim that [officers] Nguyen, Ross, and South are entitled to immunity from damages for malicious prosecution under Smiddy v. Varney, 665 F.2d 261 (9th Cir.1981). Smiddy held that, "where police officers do not act maliciously or with reckless disregard for the rights of an arrested person, they are not liable for damages suffered by the arrested person after a district attorney files charges unless the presumption of independent judgment by the district attorney is rebutted." This presumption may be rebutted by showing, for example, that the prosecutor "was pressured or caused by the investigating officers to act contrary to his independent judgment" or that the investigating officers presented the prosecutor with "information known by them to be false."

To overcome the presumption, Blankenhorn alleges that [officer] Nguyen provided false information in his report by not disclosing that he punched Blankenhorn; that [deputy prosecutor] Balleste charged him with two counts of resisting arrest based on [officers] Nguyen's and Ross's false statements that he took a combative stance and clenched his fists before being taken into custody.

...

Blankenhorn also claims false statements in the arrest reports filed by [officers] Ross and Nguyen led to his three resisting-arrest charges. Before filing the charges, Balleste did not look at the video, relying instead on Ross's and Nguyen's police reports, both of which state that Blankenhorn took a combative stance and clenched his fists. Thus, the information in those reports was the

only basis for the resisting-arrest charges. Again, Blankenhorn submitted more than mere conclusory allegations of falsehood by submitting the declaration of a witness, Garcia, that directly contradicted the police reports. A reasonable jury drawing all justifiable inferences from the video and witness statements in Blankenhorn's favor could conclude that Blankenhorn did not act as Nguyen and Ross alleged and, thus, that the reports included intentionally false information. If so, Blankenhorn would overcome the presumption of prosecutorial independence.

...

Moreover, [officer] Nguyen's purposeful omission that he punched Blankenhorn is relevant to whether there was probable cause to charge [Blankenhorn] with resisting arrest. If the prosecutor knew Nguyen used excessive force, there would likely be little or no basis for charging [Blankenhorn] with resisting arrest [under California law] as was done here.

[Some citations omitted]

Result: Reversal of U.S. District Court decision dismissing civil suit by Blankenhorn against City of Orange, California, and against several Orange Police Department officers. Case remanded for trial 1) on Blankenhorn's federal law theories of excessive force, malicious prosecution, and supervisory liability; and 2) on several of his state law theories.

(3) BRADY DISCLOSURE RULE VIOLATED AND NEW TRIAL REQUIRED: FBI AGENT SHOULD HAVE PROVIDED EXCULPATORY INVESTIGATIVE INFORMATION TO U.S. ATTORNEY WHO COULD HAVE THEN PROVIDED THE INFORMATION TO THE BANK ROBBERY DEFENDANT - - THE INVESTIGATIVE INFORMATION WAS THAT A SIMILARLY DESCRIBED PERSON (FIVE-FEET TALL, HISPANIC, WOMAN, AND ACNE COMPLEXION) HAD ROBBED VICINITY BANKS WHILE DEFENDANT WAS IN JAIL AWAITING TRIAL – In U.S. v. Jernigan, 492 F.3d 1050 (2007) (decision filed July 9, 2007), a full panel of the Ninth Circuit Court of Appeals rules, 13-2, that the federal government violated a robbery defendant's constitutional due process rights under Brady v. Maryland by failing to disclose of government-possessed exculpatory information to a criminal defendant.

The Jernigan majority opinion briefly summarizes the case and the majority's decision as follows:

Defendant Rachel Jernigan was arrested on November 10, 2000, for allegedly robbing three banks. After Jernigan was placed in custody and awaiting trial, two more area banks were robbed by a woman whose description bore an uncanny physical resemblance to hers: both women were roughly five feet tall, Hispanic, and had acne or pock-marked complexions. Although the prosecution knew that other nearby banks had been robbed by a diminutive, Hispanic female with poor skin after Jernigan's arrest, the prosecution failed to relay this information to defense counsel. Proceeding without knowledge of the second alleged bank robber, Jernigan's counsel argued at trial simply that his client was misidentified. However, the jury was not persuaded, and Jernigan was convicted of bank robbery on March 23, 2001.

While in prison Jernigan learned that a woman fitting a similar description had been arrested for robbing several banks in the area. In January 2004, Jernigan

filed a motion for a new trial asserting that (1) the government violated her due process rights under Brady v. Maryland, 373 U.S. 83 (1963), by failing to disclose before trial material, exculpatory evidence known to the government . . . The district court denied her motion in January 2005, and Jernigan appealed. After a panel of this court affirmed the district court, we voted to rehear this case en banc. We disagree with both the original panel and the district court and hold that the suppressed evidence was material to Jernigan's guilt. The district court's decision is hereby reversed, and we remand for a new trial.

The prosecutor was not made aware, during the relevant time, of the exculpatory information. That was because the FBI investigator did not forward the information to the U.S. Attorney's Office. The majority opinion concludes that the Brady rule applies to this failure of communication of material evidence to the U.S. Attorney's Office.

The two judges who dissent are vigorous in arguing that the information in question is nowhere near as compellingly exculpatory as the majority asserts, and that it is not the province of the appellate courts to retry cases.

Result: Reversal of U.S. District Court conviction of Rachel Alaffa Jernigan for armed bank robbery; case remanded for retrial.

LED EDITORIAL COMMENT: This Ninth Circuit ruling may seem a stretch, but when in any doubt as to whether investigative information they have might be relevant to pending prosecutions, officers should share with prosecutors any information that might be exculpatory as to any other pending prosecutions of which the officers are aware. Another reason to do so, in addition to trying to ensure that justice is done, is that a lawsuit for malicious prosecution can be brought against a law enforcement agency unless the agency has timely forwarded exculpatory information to the prosecutor - - the leading Washington cases on this latter point are Bender v. Seattle, 99 Wn.2d 582 (1983) and Peterson v. Littlejohn, 56 Wn. App. 1 (Div. I, 1989).

WASHINGTON STATE SUPREME COURT

INDEPENDENT CONSTITUTIONAL GROUNDS RULING ALLOWS WASHINGTON OFFICERS TO FORCE ENTRY TO ARREST ON MISDEMEANOR WARRANT, BUT SUCH ENTRIES WILL BE REVIEWED FOR GENERALIZED REASONABLENESS AND PRETEXT; ALSO, PERSON NAMED ON WARRANT MUST ACTUALLY BE PRESENT AT TIME OF ENTRY

State v. Hatchie, ___ Wn.2d ___, ___ P.3d ___, 2007 WL 2501489 (2007)

Facts and Proceedings below: (Excerpted from Supreme Court opinion)

In June 2003 a narcotics unit of the Pierce County Sheriff's Department observed Eric Schinnell buying precursor materials to methamphetamine manufacture- muriatic acid, lithium batteries, and lye. The officers followed Schinnell and discovered his driver license was suspended and there was an outstanding misdemeanor arrest warrant for him. [Court's footnote: *The warrant was for failing to appear for sentencing on a conviction for third degree driving with a*

suspended license.] The officers decided to pull him over but lost sight of his truck. However, they soon found it parked in the driveway of a duplex unit. A second car registered to him was also parked on the lawn in front of the house.

The police interviewed two neighbors. One said he believed Schinnell lived in the house, and he had seen him there earlier that day. The second neighbor was not sure whether Schinnell lived there but said he often saw him there and believed as many as six people lived there. The police also spoke with Tim Petticord, who was standing in the duplex unit's yard. Petticord told the deputies that if Schinnell's truck was there, Schinnell was there too.

The deputies approached the house to make contact with Schinnell and after knocking for about 45 minutes, Donald Robbins answered. Robbins said he believed Schinnell was "home" because his truck was there, but Robbins could not be sure since he had been sleeping. The deputies announced their presence, but Schinnell did not respond. The deputies entered to serve the misdemeanor arrest warrant and found Schinnell hiding under a truck in the garage. While searching for him, the police saw items commonly used to manufacture methamphetamine. Robbins told the police Raymond Hatchie rented the duplex. Robbins also said he had been living with Hatchie for three months, and Schinnell had been there "off and on" for the last two months.

Based upon what they had seen while arresting Schinnell, the officers obtained a search warrant for Hatchie's duplex to look for evidence of possession and manufacture of methamphetamine. Hatchie moved to suppress the evidence, claiming a misdemeanor arrest warrant did not authorize the police to enter a private residence and alternatively, the police did not have sufficient facts to reasonably believe Schinnell was living in Hatchie's home. The superior court denied the motion, and a jury found Hatchie guilty of unlawful manufacture of a controlled substance.

....

Hatchie appealed. In the published portion of its opinion, the Court of Appeals held the evidence was admissible [State v. Hatchie, 133 Wn. App. 100 (Div. II, 2006) **July 06 LED:12**]

ISSUE AND RULING: In Payton v. New York, 445 U.S. 573 (1980), the United States Supreme Court held under the Fourth Amendment that officers may (without a search warrant, consent or exigent circumstances) force entry into a residence to arrest the subject of a felony arrest warrant if the officers have: (1) reason to believe the subject of the warrant is inside the residence, and (2) probable cause to believe the premises are the residence of the subject. Courts in other jurisdictions have extended the Payton rule to misdemeanor and gross misdemeanor arrest warrants. **Does the Washington constitution, article 1, section 7, which follows the federal Payton warrantless-entry-to-arrest rule for felony arrest warrants, extend the rule to misdemeanor and gross misdemeanor arrest warrants?** (ANSWER: Yes, rules a unanimous Court (author, Justice Sanders), but with certain significant limitations - - (1) the timing and manner of entry must be reasonable, (2) the entry must not be pretextual, and (3) the subject of the arrest warrant must actually be present at the time of entry. Also, as with the Payton rule for felony arrest warrants, police must have probable cause to believe the premises are the current residence of the person named on the warrant.)

Result: Affirmance of Pierce County Superior Court conviction of Raymond K. Hatchie for manufacturing methamphetamine.

ANALYSIS:

The Supreme Court begins by explaining that if the officers were lawfully inside the premises when they entered the premises, then their plain view observations of evidence were properly considered by the magistrate who issued the follow-up search warrant. The Court next discusses (1) the Fourth Amendment rule of Payton v. New York (which we have summarized above in this LED entry's summary of issue); and (2) Washington case law under the State constitution's article 1, section 7, imposing - - in some search and seizure contexts - - greater restrictions on Washington law enforcement personnel.

The Hatchie Court concludes that the Washington constitution does permit forcible residential entry (without a search warrant, consent or exigent circumstances) to arrest on a misdemeanor or gross misdemeanor arrest warrant. But the Court explains that the unique Washington rule (created by the Court in this case) requires: (1) that the entry be reasonable in its timing and manner, (2) that the entry must not be a pretext for conducting another investigation, (3) that the officers have probable cause to believe the person named in the arrest warrant is a resident of the home, and (4) that the named person is actually present at the time of the entry.

On the generalized reasonableness issue, the Court includes the following footnote:

Of course, the police intrusion itself must be reasonable. For instance, it might be unreasonable for the police to break down a suspect's door in the dead of night to execute a misdemeanor traffic warrant. But this is not our situation. The police tried to pull Schinnell's vehicle over but lost sight of him. The arrest was not made in the middle of the night but in the early evening of June 11. (The surveillance began at 6:45 pm and Schinnell was arrested approximately an hour or two later.) The police knocked at the door and called Schinnell's name for over 45 minutes before entering. The misdemeanor arrest warrant provided the authority for this limited and reasonable intrusion.

On the issue in Hatchie of whether there was probable cause to believe the subject of the warrant lived at the home the officers' entered, the Court explains as follows its conclusion that probable cause did exist, despite the fact that the arrest warrant listed a different address for Schinnell:

Probable cause requires more than suspicion or conjecture, but it does not require absolute certainty. When evaluating probable cause we look to "the factual and practical considerations of everyday life on which reasonable and prudent men, not legal technicians, act." . . . "Probable cause exists where the facts and circumstances within the arresting officer's knowledge and of which the officer has reasonably trustworthy information are sufficient to warrant a person of reasonable caution in a belief that an offense has been committed."

Both Schinnell's vehicle registration and arrest warrant listed a different address. Also, the police never questioned Robbins (the man who answered the door) specifically whether Schinnell was a resident, though Robbins did say Schinnell was "home." On the other hand, Schinnell returned to the home after making his purchases, he had two vehicles registered to him in the driveway (one of which

was parked on the lawn), a neighbor said Schinnell lived there, and another neighbor said he frequently saw him, though he didn't know if he lived there. [Supreme Court's footnote: Federal courts have consistently upheld arrests when police relied on neighbors' statements to conclude a certain place is the residence of the person to be arrested]

These facts together seem barely enough to suggest to a reasonable person this was Schinnell's residence. While different addresses were listed, the Court of Appeals noted, "individuals frequently change their residence without updating Department of Licensing records as they are legally required to do. And it is certainly not surprising that an individual with outstanding warrants will fail to inform the government of his current residence." Were the two cars registered to the suspect not simultaneously present at the home, showing probable cause would certainly be more problematic.

[Some citations omitted]

LED EDITORIAL COMMENT: We are troubled by the Court's creation of a requirement that the person named in the arrest warrant must actually be inside the residence at the time of police entry. It is unusual, if not unprecedented, under search and seizure rules to require that officers be 100% correct on an element of a search and seizure test, as opposed, for instance, to requiring justification based on the objective probable cause standard. What if a co-resident, identical twin of the person named on the arrest warrant is the person that officers see from outside before they enter and who they find when they enter the premises? What if the subject of the warrant manages to slip out the side door into the back yard or the woods just before the officers enter? We think the Court likely will be asked at some point if the Court really meant to impose this requirement under its independent grounds article 1, section 7 ruling.

The pretext limitation of the ruling is a bit troubling as well. The only pretext cases in Washington to date address pretextual stops. See, e.g., State v. Ladson, 138 Wn.2d 399 (1999) Sept 99 LED:05. Does the pretext discussion in Hatchie mean that the Court is going to allow pretext challenges for entries to arrest on felony arrest warrants as well? Does this open the door to pretext challenges to arrests on warrants outside the context of residential entry, or to execution of search warrants? There is case law authority that pretext challenges do not apply in these other contexts. State v. Davis, 35 Wn. App. 724 (Div. I, 1983) (arrest on arrest warrant); State v. Busig, 119 Wn. App. 381 (Div. III, 2003) Feb 04 LED:16 (executing search warrant); State v. Lansden, 144 Wn.2d 654 (2001) Nov 01 LED:03 (executing search warrant). Only time will tell whether the Hatchie decision opens the door to such challenges.

Also of concern is the Court's suggestion that an entry might be held unreasonable and hence unlawful if officers were to "break down a suspect's door in the dead of night to execute a misdemeanor traffic warrant." This suggested limit on entry to arrest seems reasonable enough on its face. But we worry how this apparent generalized-sliding-scale reasonableness standard will be applied by trial court judges hearing suppression motions in the myriad circumstances encountered by officers. Again, only time will tell.

BRIEF NOTES FROM THE WASHINGTON STATE SUPREME COURT

(1) SIXTH AMENDMENT RIGHT TO COUNSEL HELD VIOLATED BY CCO'S POST-CONVICTION, PRE-SENTENCING INTERVIEW - - In State v. Everybodytalksabout, ___ Wn.2d ___, ___ P.3d ___, 2007 WL 2501359 (2007), a unanimous Supreme Court rules that the Sixth Amendment right to counsel of the murder case defendant was violated. A community corrections officer (CCO) interviewed the defendant in order to make a post-conviction, sentencing report to the superior court. The CCO's interview occurred in the absence of and without notice to defendant's attorney. The defendant subsequently appealed the conviction, won his appeal and was then re-tried for the murder. The statements that defendant had made in the CCO interview following his first trial were used against him at his re-trial. The Supreme Court rules that defendant's right to counsel was violated when the trial court at the re-trial allowed the State to submit evidence of the defendant's uncounseled statements to the CCO.

Result: Reversal of King County Superior Court convictions of Darrell Everybodytalksabout for first degree and second degree felony murder; case remanded for another re-trial.

LED EDITORIAL NOTE: For reading on some aspects of the legal issues regarding police-initiated contact with persons who are represented or who have asserted their right to counsel, see our article on the Criminal Justice Training Commission internet **LED page** - - **Initiation of Contact Rules Under Fifth and Sixth Amendments**. We do not think that the Everybodytalksabout requires any change in the analysis in that article.

(2) TAGGERS' PRIOR ACTS OF GRAFFITI WERE SIGNATURE (MO) CRIMES OF MALICIOUS MISCHIEF AND THEREFORE ADMISSIBLE IN SUBSEQUENT MALICIOUS MISCHIEF PROSECUTIONS FOR FURTHER GRAFFITI – In State v. Foxhoven and State v. Sanderson, ___ Wn.2d ___, 163 P.3d 786 (2007), the Washington Supreme Court unanimously rules as follows (as summarized by the Supreme Court in the opening paragraph of its opinion):

In 2004, petitioners Lawrence Michael Foxhoven and Anthony Sanderson were each found guilty of several counts of malicious mischief for etching graffiti on the windows of several businesses. The graffiti included three different "tags," two of which police concluded were used by [Foxhoven and Sanderson]. At their joint trial, the judge admitted evidence that each [defendant] had used one of the tags on previous occasions. [Defendant]s claim that evidence was improperly admitted under Evidence Rule (ER) 404(b), which excludes evidence of prior bad acts when that evidence is used for the purpose of proving conformity with those actions on a different occasion. We conclude that the evidence was admissible to prove modus operandi in order to corroborate or establish the identity of the persons responsible for the graffiti vandalism charged. We, therefore, affirm the convictions.

Result: Affirmance of unpublished opinion of the Court of Appeals that affirmed the Whatcom County Superior Court convictions of: 1) Lawrence Michael Foxhoven for four counts of first degree malicious mischief and 11 counts of second degree malicious mischief; and 2) Anthony Espinoza Sanderson for two counts of first degree malicious mischief and five counts of second degree malicious mischief.

(3) DOCTRINE OF "FORFEITURE BY WRONGDOING" PRECLUDES DEFENDANT FROM RAISING HIS SIXTH AMENDMENT RIGHT TO CONFRONTATION REGARDING HEARSAY FROM DECEASED VICTIM – In State v. Mason, ___ Wn.2d ___, 162 P.3d 396 (2007), a 5-4 majority of the Washington Supreme Court adopts the common law evidence

doctrine of “forfeiture by wrongdoing,” and the majority applies the doctrine to bar a murder defendant’s right-of-confrontation challenges to hearsay statements by the victim of the murder.

The forfeiture-by-wrongdoing doctrine is followed in all federal courts and in 21 states, the Mason majority opinion states. The rule bars a defendant from raising a hearsay or right-of-confrontation challenge to evidence where the defendant’s conduct prevented the declarant of the hearsay from being available for the trial. Most courts that apply the rule use a preponderance-of-the-evidence proof standard to determine if defendant was the person who prevented the declarant’s availability, here, by killing him. But, in adopting the doctrine for Washington, the Mason majority adopts the higher proof standard of clear, cogent and convincing evidence. That standard was met under the facts of this case, the Mason majority holds.

The majority justices in Mason are Chambers (author), Bridge, Fairhurst, Owens and James Johnson. Concurring in the result but disagreeing with the adoption of the forfeiture-by-wrongdoing doctrine are Alexander and Charles Johnson, while Sanders and Madsen dissent on adoption of the doctrine for Washington and on the result.

Result: Affirmance of Court of Appeals decision (on different reasoning in some respects) that affirmed the King County Superior Court conviction of Kim Heichel Mason for aggravated first degree murder.

(4) CRIMINAL DISCOVERY RULE - - DEFENDANTS CHARGED WITH POSSESSION OF CHILD PORNOGRAPHY ARE ENTITLED THROUGH THEIR ATTORNEYS, TO OBTAIN COPIES OF PHOTOS AND VIDEOTAPES PLUS MIRROR IMAGE OF HARD DRIVE OF COMPUTER – In State v. Boyd, 160 Wn.2d 424 (2007), an 8-1 majority of the Washington Supreme Court (Justice James Johnson dissenting) rules that the defendants in two pending child pornography cases (consolidated for appeal purposes) are entitled through “discovery” rules to possession of child pornography evidence that the prosecutors in the cases did not want to turn over to the defendants’ lawyers.

In one of the cases (that against Mr. Giles and Ms. Wear), the majority opinion holds that the codefendants are entitled to be given copies of photographs and videotapes that had been seized from them, and that the State intended to use at trial. That is because the defendants’ culpability might vary based on when the photographs or films were taken, by whom the photographs or films were taken, and what the photographs or films actually displayed. Defense counsel had to consider these and other defenses in carefully reviewing the very large quantity of evidence and the many counts that the State had charged, the Supreme Court explains.

The majority holds in the second case that the defendant, who had been charged with 28 crimes involving five minor victims, was entitled to the “mirror image” of the hard drive from his computer, which hard drive allegedly contained evidence of child pornography. That is because the mirror image of the computer’s hard drive would enable defense counsel to consult with computer experts who could tell how the evidence made its way onto the computer. Careful forensic review might show that someone other than defendant caused certain images to be downloaded. Such review might also indicate when images were downloaded, how often and how recently images were viewed, and other useful information for the defense.

The majority opinion explains that the trial court can impose a number of protective measures. Most of those measures would put primary responsibility on the defense attorneys for protecting the child pornography from improper use or dissemination.

Result: Rulings in two Pierce County Superior Court cases reversed in part and affirmed in part; cases of (1) State v. Lee William Giles and Maureen Elizabeth Wear and (2) State v. Boyd are remanded for further proceedings and for trial.

WASHINGTON STATE COURT OF APPEALS

PRESENT-COHABITANTS-MUTUAL-CONSENT RULE HELD NOT APPLICABLE WHERE TENANT WHO WAS SOLE PERSON WHO SIGNED LEASE CONSENTED TO SEARCH AND WHERE HOUSEGUEST WAS CHALLENGING SEARCH OF ANOTHER GUEST'S BEDROOM; ALSO, MERE PENDENCY OF EVICTION PROCESS DID NOT DESTROY TENANT'S CONSENT AUTHORITY

State v. Haapala, ___ Wn. App. ___, 161 P.3d 436 (Div. II, 2007)

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

Elizabeth "BJ" Cornett lived across the street from the house that Don Craig rented. After noticing increased traffic on the street, Cornett listed 29 vehicles that stopped at Craig's residence over two days. Cornett gave the list to the police.

In response, [Officers A and B] visited the house to talk with Craig to ask permission to search the residence for drug-related activity. When [Officers A and B] arrived, Craig was in the driveway preparing to tow a car. Craig gave the officers permission to search the house, explaining that he did not know everyone inside but that they were all guests and not necessarily living there. **[LED EDITORIAL NOTE: We assume that the consent warning met the knock-and-talk standard of State v. Ferrier, 136 Wn.2d 103 (1998) Oct 98 LED:02].**

Craig led the officers to a basement bedroom where a man and woman were sleeping. When [Officer A] entered the bedroom, he saw a glass methamphetamine pipe on the dresser. The man and woman said they knew nothing about the pipe and that it was not theirs. But when [Officer A] turned his back to them, the woman jumped out of bed, grabbed the pipe, and tried to break it by throwing it into a garbage can. At that point, the officers decided to apply for a search warrant for the residence and began clearing everybody out of the house.

[Officer A] and Craig went upstairs to wake up Greg Haapala and to tell him to leave the house. [Officer A] entered the room and saw a marijuana smoking device. The detective woke Haapala and told him to get dressed and leave the house. When Haapala got up to go to the bathroom, [Officer A] followed him. In the bathroom, he saw two methamphetamine pipes and a small plastic scale, which, according to [Officer A], drug dealers commonly use to weigh drugs.

After clearing everyone out of the house, [Officer A] called a magistrate to request a warrant to search the residence. [Officer A] outlined his training and experience and explained the factual basis for the warrant, specifically the high traffic volume, the methamphetamine pipe in the downstairs bedroom, the marijuana pipe in Haapala's bedroom, and the two methamphetamine pipes and

the scale in the bathroom. [Officer A] also stated that several people in the house had criminal histories involving drug activity. Finding probable cause, the magistrate issued the search warrant.

While executing the search warrant, police discovered methamphetamine in Haapala's room and approximately 200 grams of marijuana in the attic above Haapala's room. The State charged Haapala with unlawful possession of methamphetamine and felony possession of marijuana.

Before trial, Haapala threatened to harm Craig if he did not take the blame for the drugs. Haapala told Craig to call Haapala's attorney and explain that due to the large volume of people coming in and out of the house, the drugs could have belonged to anyone. Craig made the phone call, but he did not tell Haapala's attorney that Haapala had threatened him. After learning that Haapala had threatened Craig, the State filed an amended information, adding one count of intimidating a witness.

The jury convicted Haapala of unlawful possession of methamphetamine and intimidating a witness but acquitted him of unlawful possession of marijuana.

ISSUES AND RULINGS: 1) Where Craig was the only person whose name was on the lease as tenant, and where Haapala was a houseguest who was present but was not an occupant or user of the particular bedroom searched, were officers required to follow the present-cohabitants-mutual-consent rule of State v. Leach, and to ask for Haapala's consent before going inside the house or searching the bedroom in question? (**ANSWER:** No); 2) Where Craig's landlord had started the eviction process prior to the day when the officers asked for Craig's consent to search the house, did Craig, as a holdover tenant, have authority to consent to a search of the house? (**ANSWER:** Yes, rules a 2-1 majority)

Result: Affirmance of Jefferson County Superior Court convictions of Gregory Bernhart Haapala for possessing methamphetamine and for intimidating a witness; reversal of sentence and remand for resentencing (**Note:** issues relating to the intimidating-a-witness charge and the sentencing are not addressed in this **LED** entry).

ANALYSIS: (Excerpted from Court of Appeals opinion)

Consent to search a premises is valid, under the common authority rule, where (1) the consenting party has the legal authority to permit the search, and (2) it is reasonable for a court to find that the defendant has assumed the risk that a cohabitant might permit a search. [State v. Morse, 156 Wn.2d 1 (2005) **Feb 06 LED:05**]. A person with a sufficient amount of control may have common authority over the premises. Morse. But if two cohabitants with equal authority over common areas are present, the police must obtain consent from each cohabitant. Morse.

The critical inquiry is whether the person with common authority has free access to the searched area and has the authority to invite others into that area. Morse. "A person may have free access to some areas of the premises but not all areas." Morse. For example, a person may share control and access to the kitchen, the dining room, the living room, and the bathroom, but not other, private areas such as the person's bedroom. Morse.

According to Lynda Spindor, the landlord, Craig was the only signatory on the lease, but several additional tenants lived in the house to share the rent obligation. Haapala moved into the upstairs bedroom on January 1 or 2, 2005, when Craig was moving out of that bedroom. Haapala asked Spindor to extend the lease with him as the tenant, but she refused. Due to complaints from neighbors, on January 15, 2005, Spindor served Craig with an eviction notice that gave Craig three days to vacate the premises. Police searched the house on January 19, 2005.

The trial court found that although Craig was being evicted, he was the only person on the lease and he “still had furniture and other possessions in the house and his car was visible outside of the house.” From that finding, it concluded that “Craig, as the person who rented the home, . . . had the authority to consent to the [initial] search.” The record shows that Craig retained sufficient access and control over the residence to consent to a search of the common areas, including the downstairs bedroom. See Morse.

When [Officer A] arrived, Craig was in the front yard preparing to tow a car. Craig told [Officer A] that although “there was an eviction in . . . progress, . . . [Craig] was still in control of the house” and that everyone in the house was a guest. Craig was at the house four days earlier when Spindor served him with the eviction notice. Although Craig began moving out on January 1 or 2, he still had furniture in the house and his car was in front of the house. Given this free access and control over certain areas in the house, Craig had authority to consent to a search of those areas. See Morse. (The critical inquiry is whether the person with common authority has free access to the searched area and has authority to invite others into that area).

The dissent states that Craig did not have authority to consent to a search of the house because Craig-as a holdover tenant subject to an unlawful detainer action-was unlawfully in possession of the premises. But the fact that Craig was an unlawful detainer does not automatically strip him of the ability to consent to a search of a house he possessed and used. See United States v. Dubrofsky, 581 F.2d 208, 212 (9th Cir.1978) (authority justifying consent to search need only rest on mutual use of the property) (citing United States v. Gulma, 563 F.2d 386, 389 (9th Cir.1977)). Spindor still needed to file an unlawful detainer action and obtain a court's order to force Craig to vacate the premises. RCW 59.12.040-.080. And Spindor could not have taken possession of the house during the unlawful detainer action's pendency unless she received a writ of restitution from the court. RCW 59.12.090. Even then, Craig could have filed a bond with the court to stay enforcement of the writ of restitution and to retain possession of the premises until the unlawful detainer action concluded. RCW 59.12.100. Thus, Craig, as a user and possessor of the house, would have had the authority to consent to a search of the common areas until the court ordered him to vacate the premises.

The question remains whether Haapala established that he was a cohabitant with equal rights to control over common areas. If so, the police could enter and search the house common areas only with both Haapala's and Craig's permission. See Morse. Courts have found cohabitants with equal rights to control where a boyfriend lives with his girlfriend in a house she leased, where a

husband and wife live on the premises, and where an employer held his girlfriend out to be a co-signatory of the lease and a co-owner of the searched premises, Haapala does not fit within any of these categories.

Haapala is more akin to the defendant in State v. Thompson, 151 Wn.2d 793 (2004). **Aug 04 LED:13**. In Thompson, our Supreme Court held that the defendant was not a co-occupant with equal rights of control over a boathouse on his parents' property even though he lived on his parents' property and used the boathouse to store items. In that case, the defendant lived rent-free on his parents' property in a trailer that his parents owned. Although the defendant's parents allowed him to store items in their boathouse, they did not make boathouse available to the defendant for his exclusive use. And nothing in the record showed that the defendant was ever in exclusive control of the boathouse. Rather, the defendant's use of the boathouse "was clearly dependent upon the permission of the owners." Thus, our Supreme Court held that the defendant was not a co-occupant with equal access and control because, "while [the defendant] and his parents each had access to the boathouse, his right to access, as a nonoccupying nonowner, was subordinate to his parents[']".

Unlike the defendant in Thompson, Haapala occupied the searched area. Nonetheless, Haapala had no right to occupy and access the house. Haapala moved to the home in early January. He knew that Craig was being evicted and asked the landlord to lease the premises to him. The landlord refused. Thus, at the time of the search, Craig was the only named tenant on the lease and the only person who had the landlord's permission to reside at the premises. Craig described Haapala and the others in the house as "guests," not co-tenants. Haapala presented no evidence to the contrary, and although he now argues that he was a sublessee, the record does not support the claim. Craig did not testify that Haapala was paying him rent or that they had any agreement that Haapala was a sub-tenant. We conclude that Haapala was not a cohabitant with equal rights of control over the common areas.

DISSENT

Judge Penoyar dissents, arguing in vain (and without citing any supporting authority from Washington or elsewhere), that the fact that Craig was in the process of being evicted, and was subject to an "unlawful detainer" action, meant that Craig lacked authority to consent to a search.

LED EDITORIAL COMMENT: We believe that the majority opinion is correct in this case. We also believe that the officers acted reasonably in asking Craig for consent. The officers apparently did not have probable cause for a search warrant, and, even though the landlord had begun eviction proceedings, the landlord could not consent to search of the premises in which the tenant - - Craig - - was holding over.

WHERE LITTERING WAS MISDEMEANOR UNDER OLYMPIA ORDINANCE, ARREST ON PROBABLE CAUSE JUSTIFIED SEARCH INCIDENT TO ARREST OF VEHICLE OCCUPIED BY LITTERER AT TIME OF OFFENSE AND JUST PRIOR TO ARREST

State v. Kirwin, 137 Wn. App. 387 (Div. II, 2007)

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

Olympia Police Officer Pearce was on a routine patrol when he saw a passenger in a truck driven by Kirwin throw a partially full 24-ounce beer can onto the sidewalk. Pearce activated his emergency lights and then noticed that the passenger, Casey Irwin, seemed to conceal something between the front seats. Kirwin pulled over.

Officer Pearce asked both men for identification; Irwin gave his name and birth date, and Kirwin showed his Washington State identification card. Pearce arrested Irwin for littering. Irwin admitted that he had littered in order to avoid being caught with an open container in the truck.

Officer Pearce then asked Kirwin to step out of the truck. Pearce was concerned for officer safety because it was 2 a.m. and dark and Kirwin wore bulky, baggy outer clothing. He frisked Kirwin and found a large amount of cash and a Marlboro cigarette pack in his pocket. He then asked Kirwin to wait by the patrol car.

Officer Pearce then searched the passenger side of the truck incident to Irwin's arrest, paying special attention to the area in which he had seen Irwin conceal something. In that area, Pearce found a black cloth mesh bag containing several baggies that he believed held a controlled substance.

The officer also noticed a locked center console and asked Kirwin's permission to open and search it. Kirwin replied that the truck belonged to his boss. Officer Pearce told Kirwin that he could effectively consent because the truck was under his control. Kirwin agreed, allowing Pearce to use a key from the key ring in the truck's ignition to open the console. Inside, Pearce found an envelope with \$2,800 in cash and a Marlboro cigarette pack containing what Pearce suspected was amphetamine.

Officer Pearce arrested Kirwin and advised him of his Miranda rights, which he waived. Pearce asked Kirwin whether the items inside the console were his, and Kirwin admitted that both the \$2,800 and the drugs belonged to him.

The State charged Kirwin with one count of unlawful possession of a controlled substance, methamphetamine, in violation of RCW 69.50.4013(1). The State offered Exhibit 1, the substance found in the console, which the crime lab identified as 3.4 grams of crystalline methamphetamine. Kirwin's counsel did not move to suppress this evidence and the trial court did not hold a CrR 3.5 or CrR 3.6 hearing. A jury found Kirwin guilty and the trial court sentenced him to twelve months and one day incarceration.

ISSUE AND RULING: Where a City of Olympia ordinance makes littering a misdemeanor, was the arrest on probable cause for littering lawful, and, if so, did that arrest of a passenger in the vehicle justify a search of the passenger area of the vehicle? (ANSWER: Yes and yes)

Result: Affirmance of Thurston County Superior Court conviction of Dennis Ray Kirwin for unlawful possession of methamphetamine.

ANALYSIS:

On appeal, Kirwin sought to establish that his attorney provided ineffective assistance at trial by failing to move to suppress the evidence seized from the vehicle in the search incident to arrest of Kirwin's passenger. It is in that context that the Court of Appeals analyzes, as follows, the search-incident-to-arrest issue:

A search incident to arrest is valid only if (1) the object searched was within the arrestee's control immediately before, or at the moment of, arrest; and (2) the events occurring after the arrest but before the search did not render the search unreasonable. In the context of a vehicle search incident to arrest, the so-called "automobile exception" to the warrant requirement, the vehicle is the object searched; thus, it must have been within the arrestee's control immediately before or at the moment of arrest. State v. Rathbun, 124 Wn. App. 372 (2004) **Jan 05 LED:08**; and see State v. Cass, 62 Wn. App. 793 (1991) **Jan 92 LED:06** (explaining that the search incident to arrest exception may authorize the police to search a vehicle after arresting the vehicle's passenger).

Under State law, littering to the extent involved here is a civil infraction that is punishable only by a fine. RCW 70.93.060(2), 7.80.120(2). But under OMC 9.40.110, littering is a misdemeanor, punishable by a fine and up to 90 days in jail. OMC 9.64.010. State law authorizes a police officer to arrest a person without a warrant for committing a misdemeanor in the officer's presence. Former RCW 10.31.100. "Misdemeanor" includes misdemeanor violations of municipal codes. It is undisputed that Officer Pearce saw Irwin throw a partially full beer can from a moving vehicle near the corner of Fifth and Plum in Olympia. Thus, former RCW 10.31.100 gave Pearce authority to lawfully arrest him and search incident to that arrest.

[Some citations deleted]

The Court of Appeals notes that Kirwin also argued for the first time in oral argument to the Court of Appeals that the fact that state law makes littering an infraction barred the City of Olympia from making the violation a misdemeanor, and precluded the officer from making a misdemeanor arrest. Because Kirwin raised the question too late in the process, the Court of Appeals declines to answer it. But the Court indicates that the Court would reject the argument if the Court were to address it.

"STRONG CHEMICAL SMELL" FROM FIFTH WHEEL TRAILER - - EMERGENCY EXCEPTION TO SEARCH WARRANT REQUIREMENT HELD NOT TO APPLY WHERE THERE WAS NO IMMINENT THREAT OF SUBSTANTIAL HARM TO PERSON OR PROPERTY

State v. Leffler, ___ Wn. App. ___, ___ P.3d ___, 2007 WL 2380774 (Div. II, 2007)

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

[Officer A] and his Community Support Team (CST) responded to an anonymous complaint alleging "strong chemical smells" coming from a property in Puyallup. Specifically, the caller stated that the smells were especially strong by the fifth wheel travel trailer near the property's driveway. The property contained the fifth wheel, a mobile home, a shed, and a garage. A neighboring home was "at least within 200 feet" of Leffler's trailer.

Upon arriving at the property, [Officer A] could smell a “really harsh chemical smell” from about 30 feet away from the fifth wheel. A CST member knocked on the fifth wheel's door (from which the smell was emanating), and Fred Leffler exited the trailer and closed the door behind him.

The officers ran Leffler's name through the records system and discovered an outstanding DOC felony escape warrant. [Officer A] arrested Leffler, placed him in the patrol car, and read him his Miranda rights. Leffler informed [Officer A] that a friend had been “pound[ing] out some slugs” in the fifth wheel, and that he was “gassing” (a specific phase of methamphetamine production). He also told officers that there was muriatic acid inside the fifth wheel, which is used in the final phase of methamphetamine manufacturing to create hydrochloric acid gas.

[Officer B] (also a CST member) spoke with Leffler's probation officer and learned that he had permission to search the fifth wheel as part of Leffler's DOC conditions. Leffler refused to consent to the DOC search. Officer [B] asked Leffler if there was a methamphetamine lab inside the trailer, and Leffler replied that there was some muriatic acid inside and a “gasser.” Leffler also stated that he was the only person on the premises.

Based on Leffler's statements and the strong chemical smell, the officers concluded that it was not safe for them to enter the trailer, and they called the Team to the scene. While waiting for the Team, the CST began to conduct a protective check of the property for officer safety reasons but did not enter any buildings. They noticed a strong chemical smell coming from a mobile home on the property, but no CST officer entered the mobile home to secure it due to safety concerns. The Team, including [Officers C and D], arrived about one hour later.

When [Officer C] arrived at the scene, he was briefed by the CST officers, and he and [Officer D] decided to clear the property for officer safety reasons and to execute a performance safety assessment, “making sure that there is not an active cook or some sort of chemical reaction going on that could erupt into flame or explode.” The Team entered the property structures and observed methamphetamine manufacturing evidence in each of them. The officers detected chemical odors emanating from the fifth wheel, mobile home, and shed. They could smell the chemical odor through their respirators, but no one identified the specific smell in their testimony. The team also entered the garage despite the fact that they never smelled chemical odors from outside the garage at any time.

[Officer C] testified that there was not time to get a search warrant because of the dangers methamphetamine labs pose – he had seen “reactions that have actually exploded or tanks that were leaking with ammonia ... areas had to be evacuated.” He also pointed out that one of the byproducts of the red phosphorous method of manufacture is phosphene gas, which is fatal if inhaled. Officers applied for and obtained a search warrant after the scene was secured.

In April 2005, Leffler was charged with the unlawful manufacture of methamphetamine in violation of RCW 69.50.401(1)(2)(b). He filed a motion to exclude all evidence discovered during the search. After a hearing, the trial court denied the motion. It found that the search was not pursuant to Leffler's

probation status and was not a valid protective sweep, but that it was valid under the emergency exception to the search warrant requirement. Further, the court found that the sweep of the garage was not justified, but it concluded that even without the evidence from the garage, the affidavit would have been sufficient for a warrant.

Leffler was convicted after a bench trial on stipulated facts.

ISSUE AND RULING: Where the officers had no reason to believe that any person or property was under imminent threat of substantial harm, does the emergency exception to the constitutional search warrant requirement apply in light of the “strong chemical smell” apparently coming from a fifth wheel trailer? (**ANSWER:** No)

Result: Reversal of Pierce County Superior Court conviction of Fred Irvine Leffler for manufacturing methamphetamine.

ANALYSIS: (Excerpted from Court of Appeals opinion)

Police officers may enter a building without a warrant when facing exigent circumstances (emergency exception). The exception recognizes the “community caretaking function of police officers, and exists so officers can assist citizens and protect property.” State v. Schlieker, 115 Wn. App. 264 (Div. II, 2003) **May 03 LED:12**. The emergency exception justifies a warrantless search when (1) the officer subjectively believes that someone needs assistance for health or safety reasons, (2) a reasonable person in the same situation would similarly believe there was a need for assistance, and (3) the need for assistance reasonably relates to the place searched. State v. Lawson, 135 Wn. App. 430 (Div. II, 2006) **Dec 06 LED:15**. When analyzing these factors, we view the officer's actions as the situation appeared to the officer at the time.

When invoking the emergency exception, the State must show that the claimed emergency is not merely a pretext for conducting an evidentiary search. Generally, we have endorsed an emergency entry where the officers reasonably believed that a specific person or persons needed immediate help for health or safety reasons. State v. Lynd, 54 Wn. App. 18 (1989) (where a police officer had knowledge of a 911 hang-up call from defendant's home, the phone line remained busy after the 911 call, a domestic violence incident between spouses had just occurred, defendant was loading his things into his vehicle and preparing to leave, and defendant did not want the officer to enter the home to check on his wife, emergency exception justified warrantless entry into defendant's home to investigate the wife's well-being); see also State v. Gocken, 71 Wn. App. 267 (Div. I, 1993) **March 94 LED:12** (the emergency exception justified a warrantless search where police officers entered the defendant's and victim's condominium and kicked in the victim's bedroom door to perform a “routine check on [the victim's] welfare” after reports of decaying flesh odor and reports from family and friends that they had not seen the victim for several weeks). We have been unwilling to extend the doctrine to authorize warrantless entries where the officers express only a generalized fear that methamphetamine labs and their ingredients are dangerous to people who might live in the neighborhood.

The emergency exception has also been applied to validate police entry based on knowledge that dangerous chemicals exist that may imminently cause harm. State v. Downey, 53 Wn. App. 543 (Div. I, 1989) (ether odor justified warrantless entry under emergency exception). Courts have also extended the emergency exception to the requirement for a search warrant to allow police to enter a building if they reasonably believe persons are in imminent danger of death or harm, or where there are objects likely to burn or explode. State v. Muir, 67 Wn. App. 149 (Div. I, 1992) **Feb 93 LED:08**.

A survey of Washington law reveals two factors that must be present for the emergency exception to apply. First, there must be a substantial risk of serious injury to persons or property. Schlieker (emergency exception did not justify warrantless entry where deputies had no information indicating that someone had been injured); Lawson (emergency exception did not justify warrantless search where deputies did not ask about defendant's well-being and had no information that anyone was injured and in need of immediate help); Downey (warrantless search justified when premises contain objects likely to burn, explode, or otherwise cause harm).

...

Second, the risk to persons or property must be imminent. Downey (emergency exception applies when entry is based on knowledge that dangerous chemicals exist that may imminently cause harm).

...

In sum, the emergency exception only applies where there is an imminent threat of substantial injury to persons or property. The evidence demonstrates no such threat here. The initial response team was clearly concerned for their own safety, but that is insufficient to justify a warrantless search under the emergency exception.

[Officer A] testified that none of the officers entered any of the buildings on the premises before the Team, wearing protective gear. Additionally, [Officer C] testified that had there been an ongoing chemical reaction, he believed that the resulting fumes would have been a danger to the surrounding area. He also pointed out that he had seen such reactions explode, but he did not testify as to the imminence of this danger.

The [officers] had no information indicating the presence of other persons on the property, and no reason to believe that any person or property was under imminent threat of substantial harm. While these particular circumstances raised valid concerns for officer safety and raised the possibility of toxic gas release, fire and explosion, there is no evidence that any of these threats were imminent. Thus the emergency exception does not apply.

The warrantless search was not lawful under the emergency exception; we therefore hold that the trial court erred in admitting the evidence gathered in the search.

[Footnote and some citations omitted]

THIEF IN POSSESSION OF 78 BOXES OF COLD MEDICINE AND 64 LITHIUM BATTERIES CAN BE PROSECUTED FOR POSSESSING PSEUDOEPHEDRINE WITH INTENT TO MANUFACTURE METHAMPHETAMINE

State v. Missieur, ___ Wn. App. ___, ___ P.3d ___, 2007 WL 2353380 (Div. I, 2007)

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

According to police reports, David Missieur and Hope Ashworth shoplifted numerous boxes of cold medicine from a grocery store in Edmonds around 2:45 a.m. on June 29, 2005, then drove away. Police officers, alerted by store personnel, pulled their car over a few minutes later. The officers arrested Missieur and Ashworth after observing unopened boxes of pseudoephedrine cold medicine and packages of lithium batteries on the floor and in a duffel bag in the back of the car. The officers counted 78 boxes of cold medicine, including 30 within the coat Missieur had been wearing at the grocery store. There were 64 new, unopened lithium batteries.

The State charged Missieur and Ashworth with the crime of possession of ephedrine or pseudoephedrine with intent to manufacture methamphetamine. Missieur moved to dismiss. At a hearing on the motion, a detective trained in methamphetamine manufacture testified that methamphetamine can be made using substances extracted from cold medicine, lithium batteries, and ammonia. He said that, other than in a retail store, he had “never seen large quantities of lithium batteries and cold medicine together without it being related to a lab.” Lithium batteries, he explained, contain lithium metal. “Lithium metal is one of only a couple of metals, and it’s the most easily obtainable metal, that’s needed to convert the ephedrine to methamphetamine”.

Missieur argued that the case should be dismissed because the activity of collecting ingredients was not enough to prove an intent to engage in the actual manufacture of methamphetamine. The trial court agreed and granted the motion to dismiss.

ISSUE AND RULING: Where Missieur was caught stealing 30 boxes of pseudoephedrine cold medicine, and he had 48 more boxes in his possession, along with 64 lithium batteries, was there sufficient evidence to prosecute Missieur for possessing pseudoephedrine with intent to manufacture methamphetamine? (ANSWER: Yes)

Result: Reversal of Snohomish County Superior Court dismissal of charges against David Farris Missieur for possessing pseudoephedrine with intent to manufacture methamphetamine; case remanded to Superior Court for trial.

ANALYSIS: (Excerpted from Court of Appeals opinion)

The charging statute, former RCW 69.50.440(1), made it unlawful for a person to possess pseudoephedrine or other precursor drugs “with intent to manufacture methamphetamine”. The statute defines “manufacture” as “the production, preparation, propagation, compounding, conversion, or processing of a controlled substance, either directly or indirectly”. RCW 69.50.101(p). A person acts with intent when he acts with the objective or purpose to accomplish a result which constitutes a crime. RCW 9A.08.010(1)(a).

Generally, bare possession of a controlled substance is not enough to support a conviction of possession with intent to manufacture. At least one other factor supporting an inference of intent must exist. The defendant's intent must logically follow as a matter of probability from the evidence. State v. McPherson, 111 Wn. App. 747 (Div. III, 2002) **Aug 02 LED:22**.

In McPherson, the State charged the defendant in Count 1 with manufacturing methamphetamine or alternatively with possession of precursor drugs with intent to manufacture. The court found ample evidence to support either a completed manufacture or intent to manufacture even though not all necessary ingredients were present.

Sufficient evidence to support a conviction for possession of pseudoephedrine with intent to manufacture was also found in State v. Moles, 130 Wn. App. 461 (Div. II, 2005) **Feb 06 LED:18** (three consolidated appeals). The court followed McPherson and reiterated the test: "Bare possession of a controlled substance is not enough to support an intent to manufacture conviction; at least one additional factor, suggestive of intent, must be present." The defendants in Moles purchased pseudoephedrine from three different stores within a short period of time. Close to 440 pseudoephedrine tablets, removed from their blister packs, were found loose in the defendants' stolen vehicle. An officer testified that the first stage in the manufacturing process is to acquire pseudoephedrine tablets and then process them. "The fact that so many pills had been removed from the blister packs leads to the only plausible inference: that the defendants were in the process of preparing the pseudoephedrine for the first stage of the manufacturing process." The court held this evidence alone was sufficient to support the jury's finding of intent to manufacture, while noting the presence of other factors that were also indicative of intent to manufacture: possession of a coffee filter with methamphetamine residue, and a pattern of acting in concert with other individuals to make numerous individual purchases of cold medicine in a short period of time.

In contrast to McPherson and Moles, evidence of intent to manufacture was held insufficient in State v. Whalen, 131 Wn. App. 58 (2005) **March 06 LED:22**. Whalen was caught stealing seven boxes of a nasal decongestant that contained pseudoephedrine. His conduct violated RCW 69.43.110(2), which makes it a gross misdemeanor to acquire more than three packages of pseudoephedrine in a 24-hour period. Whalen was charged and convicted of the more serious crime of possession of pseudoephedrine with intent to manufacture, a class B felony. Defending the conviction on appeal against a challenge to the sufficiency of the evidence, the State argued that Whalen's intent to manufacture was shown by the amount of pseudoephedrine in his possession and the illicit method of acquisition. The State also argued that "the fact that RCW 69.43.110 limits individuals to the purchase of three packages of pseudoephedrine in a 24-hour period implies an intent to manufacture if one buys or shoplifts more than the legal limit." The court rejected this line of reasoning and held that Whalen's acquisition of more than the legal daily limit of pseudoephedrine could not, by itself, subject him to punishment for the more serious crime. "That there are two distinct offenses with disparate punishments indicates that the legislature did not intend to equate the acquisition of more than three boxes of cold medicine containing pseudoephedrine within a 24-hour period with intent to manufacture methamphetamine."

The Supreme Court found both Moles and Whalen persuasive in State v. Brockob, 159 Wn.2d 311 (2006) [no previous LED entry] (three consolidated appeals). Appellant Brockob shoplifted a large quantity of Sudafed and left some of the packaging in the store. The court concluded the facts were more like Whalen than Moles and determined the evidence was insufficient to convict. “He did not have any coffee filters or other equipment used in the manufacturing process. In short, nothing pointed to Brockob's intent to manufacture rather than merely possess Sudafed.” On the other hand, the court concluded the evidence against one of the other appellants, Gonzalez, was sufficient to convict him of attempted manufacture. Gonzalez had been caught in a vehicle with three sealed bottles of ephedrine tablets and unused coffee filters in two different sizes. Another person who was in the car had another bottle of ephedrine tablets. The court held the evidence sufficient because “at least two of the three factors cited in Moles were present. Coffee filters were found on the backseat of the vehicle, and the amount of ephedrine in the vehicle seems excessive but for the likely connection to methamphetamine manufacturing.” Brockob.

Under Whalen, Missieur's possession of as many as 78 stolen boxes of pseudoephedrine would arguably not, by itself, be enough to sustain the charge of possession with intent to manufacture. The issue here, then, is whether Missieur's simultaneous possession of the lithium batteries adequately distinguishes his case from Whalen and brings it within the ambit of the Moles test requiring “at least one additional factor, suggestive of intent”. Moles.

Missieur begins with the premise that the statutory element of “intent to manufacture” means intent to become personally involved in combining the ingredients, as opposed to merely having the intent to supply the ingredients to someone else who would combine them. We will assume this premise is correct, as other jurisdictions have interpreted similar statutory language in that way.

...

Relying on Weston and Truesdell, Missieur argues that the most a jury could infer from his possession of pseudoephedrine and lithium is that he was gathering ingredients of methamphetamine with the intent to supply them to some other person yet unknown. He contends that possession of another precursor ingredient along with pseudoephedrine does not support the inference of intent to manufacture any more than possession of pseudoephedrine by itself.

We disagree. Missieur's argument is for trial, not for a Knapstad motion. His possession of the lithium batteries along with the pseudoephedrine cold medicine satisfies the Moles test of “pseudoephedrine possession plus”. While the possession of lithium batteries is not in itself illegal, it is the combination of lithium with the pseudoephedrine, a controlled substance, that makes the inference of intent to manufacture methamphetamine follow logically as a matter of probability. Missieur's argument implies that no matter how many ingredients or pieces of equipment a defendant collects in addition to pseudoephedrine, intent to manufacture cannot be found unless there is also concrete proof of an existing or intended manufacturing operation. Concrete proof would undoubtedly be helpful to the State at trial, but it is not legally necessary. The State is entitled to rely on reasonable inferences. When a suspect has gone so far as to possess

not only pseudoephedrine but also at least one other distinctive ingredient or manufacturing accessory, it is reasonable to infer that he is planning to personally manufacture methamphetamine even though it is also possible that he is hoping only to become a supplier of ingredients.

...

[The other jurisdictional decisions], when read together, draw the line between mere possession and possession with intent to manufacture in the same way that Whalen and Moles do. To survive a Knapstad motion, the State must show more than mere possession of pseudoephedrine. But the State need not necessarily prove that the defendant has already begun to combine ingredients, that he knows the recipe, that he has a lab, that he has customers, that he has promised to manufacture, or that he is linked to a known manufacturer. An additional factor such as possession of lithium batteries is enough for a prima facie case of intent to manufacture. The motion to dismiss should have been denied.

In resolving the State's challenge to the [dismissal] ruling, we have not addressed a corpus delicti issue that both parties have briefed. The corpus delicti issue is whether Missieur's statements to the police can be considered in evaluating the sufficiency of the evidence to prove intent to manufacture. Because we conclude the evidence was sufficient without those statements, it is unnecessary to decide the corpus delicti issue.

[Some citations omitted]

NO DRIVER'S LICENSE SUSPENSION FOR FELONY USE OF CAR UNDER RCW 46.20.285(4) WHERE COCAINE WAS ON THE PERSON OF DUI DRIVER

State v. Wayne, 134 Wn. App. 873 (Div. III, 2007)

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

A police officer stopped Thomas Robert Wayne's car. Mr. Wayne had been drinking and struck two other cars. The officer arrested Mr. Wayne and searched him incident to arrest. The officer found a bottle of cocaine in Mr. Wayne's pocket.

The State charged Mr. Wayne with possession of a controlled substance, driving while under the influence, and failure to remain at the scene of an accident. Mr. Wayne pleaded guilty to possession of a controlled substance and driving while under the influence. The State moved to dismiss count three (failure to remain at the scene of an accident).

The court entered a finding that the charge for possession of a controlled substance was "a felony in . . . which a motor vehicle was used." And so it found Mr. Wayne's driver's license should be revoked.

ISSUE AND RULING: RCW 46.20.285 requires suspension of a driver's license following conviction for "[a]ny felony in . . . which a motor vehicle is used." Does mere possession of cocaine while driving a car come within this statute? (**ANSWER:** No)

Result: Reversal of Spokane County Superior Court driver's license suspension order against Thomas Robert Wayne.

ANALYSIS: (Excerpted from Court of Appeals opinion)

Mr. Wayne argues that the trial court erred when it suspended his license. He argues that he did not “use” his car to commit a felony as the statute requires. He argues that the use of his car was incidental to his felony conviction for possession of a controlled substance because the cocaine was in his pocket.

RCW 46.20.285 requires that a driver's license be suspended following a conviction for “[a]ny felony in . . . which a motor vehicle is used.” RCW 46.20.285(4). Used means that the vehicle must be “employed in accomplishing” a crime. State v. Batten, 95 Wn. App. 127 (1999), aff'd, 140 Wn.2d 362 P.2d 350 (2000). Accordingly, there must be “ ‘some reasonable relation to the operation of a motor vehicle or . . .the use of the motor vehicle must contribute in some reasonable degree to the commission of the felony.’ ” State v. Hearn, 131 Wn. App. 601 (2006).

A car used to store or conceal a controlled substance falls within the meaning of the statute. Hearn. Batten. But in each of these cases the drugs were stored in the car not on a person. Hearn. Batten. The use of the car is merely incidental if possession is with the person rather than the car.

Here, the bottle of cocaine was in Mr. Wayne's pocket. There is, then, no “reasonable relation” between Mr. Wayne's possession of a controlled substance and the operation of his car. The drugs did not contribute to Mr. Wayne's vehicle accident; the alcohol did. And Mr. Wayne did not transport the drugs with an intent to deliver them.

The car here did not then “ ‘contribute in some reasonable degree to the commission of the felony.’ ”

We therefore reverse the suspension of Mr. Wayne's driver's license.

[Some citations omitted]

BRIEF NOTES FROM THE WASHINGTON STATE COURT OF APPEALS

(1) PREMEDITATION EVIDENCE HELD SUFFICIENT TO SUPPORT ATTEMPTED FIRST DEGREE MURDER CONVICTION FOR SHOOTING THROUGH WINDOW AT WIFE, AND THE COMMON LAW DOCTRINE OF “TRANSFERRED INTENT” SUPPORTS DEFENDANT’S CONVICTIONS FOR ASSAULTING THE CHILDREN WHO WERE IN THE ROOM WITH HIS WIFE WHEN HE SHOT AT HER – In State v. Elmi, ___ Wn. App. ___, 156 P.3d 281 (Div. I, 2007), the Court of Appeals rejects the arguments of a defendant in relation to his convictions for first degree attempted murder of his estranged wife and three counts of first degree assault relating to innocent bystander children.

Ali Elmi had a heated argument with his estranged wife. She went to her mother’s house. Later in the day he went to his wife’s mother’s house with a loaded handgun. Several people outside the house tried to restrain him. He broke free, and, still outside, he fired three or four times through a window at which his wife had been standing, inside the home, only moments earlier. When he shot, there were three young children in the room with the wife. He narrowly missed hitting his wife and the children.

The Court of Appeals holds that these facts readily support the first degree attempted murder conviction because the facts demonstrate defendant's intent to kill with premeditation. Also, under the doctrine of transferred intent, the facts also support the first degree assault convictions as to the children. Because Mr. Elmi intended to kill his wife when he shot through the window at her, his intent, for purposes of the intent element of the assault statute, transfers to the children, who were also put at risk by the intentional action of the defendant.

Finally, the Elmi Court rejects defendant's argument that the transferred intent doctrine should apply only if the defendant was aware of the presence of the unintended victims.

Result: Affirmance of King County Superior Court convictions of Ali Elmi for attempted first degree murder and three counts of first degree assault with a deadly weapon (a conviction for a fourth deadly weapon assault count – as to the wife – is reversed on double jeopardy grounds not addressed in this LED entry).

LED EDITORIAL REFERENCE: The Elmi opinion relies in part for its “transferred intent” analysis on the Washington Supreme Court decision in State v. Wilson, 125 Wn.2d 212 (1994) Feb 95 LED:07.

(2) PIT BULL THAT ATTACKED POLICE OFFICER WAS A “DEADLY WEAPON” FOR PURPOSES OF SECOND DEGREE ASSAULT STATUTE – In State v. Hoeldt, __ Wn. App. __, 160 P.3d 55 (Div. II, 2007), the Court of Appeals rules that a pit bull can be (and, under the circumstances of this case, was) a deadly weapon within the meaning of RCW 9A.04.110(6) and the second degree assault statute in chapter 9A.36 RCW.

The Hoeldt Court summarizes the officers' testimony regarding the circumstances as follows:

Vancouver Police [Officers A and B] went to Robbie Hoeldt's home to serve an outstanding arrest warrant. [Officer A] approached the partially opened door and knocked. According to [Officer A], the house was dark, but with his flashlight, he could see Hoeldt standing about 25 feet away, holding what looked like a large pit bull by either the collar or neck.

The dog started barking and growling at [Officer A]. Hoeldt motioned with his arm and the dog charged toward [Officer A]. [Officer A] retreated, but when the dog lunged at his throat and chest, [Officer A] shot and killed him.

“Deadly weapon” is defined in RCW 9A.04.110(6) as follows:

any explosive or loaded or unloaded firearm, and shall include any other weapon, device, *instrument*, article, or substance, including a “vehicle” as defined in this section, which, under the circumstances in which it is used, attempted to be used, or threatened to be used, is readily capable of causing death or substantial bodily harm.

The Hoeldt Court holds, after extended discussion, that the word “instrument” in this definition can include a “pit bull,” depending on the totality of the circumstances, and the Court then explains as follows that the manner of use of the pit bull in this case establishes that the dog was used as a deadly weapon:

An instrument that is not defined as deadly weapon per se may still meet the statutory definition of “deadly weapon” if it is used in a manner “capable of causing ... substantial bodily [harm].” State v. Shilling, 77 Wn. App. 166 (Div. I,

1995) **Oct 95 LED:12** (quoting RCW 9A.04.110(6)) (finding that a bar glass was used as a deadly weapon). In measuring the manner of use, we look at the assailant's intent, his ability to cause substantial injuries, the degree of force, and the potential or actual injuries inflicted. State v. Barragan, 102 Wn. App. 754 (Div. III, 2000) **April 01 LED:19** (holding that even though the defendant missed, a pencil used to attack the victim was intended to be deadly weapon).

The evidence here established that Hoeldt used his pit bull as a deadly weapon. [Officer A] described a large, powerful dog that was barking and growling at him. Hoeldt was holding the dog by its neck or collar, and when Hoeldt released the dog, it charged [Officer A], lunging at his throat and chest. A large, powerful dog that, by training or temperament, attacks a person in this manner when intentionally released or directed to do so by its handler, meets the instrumentality "as used" definition of deadly weapon.

Result: Affirmance of Clark County Superior Court conviction of Robbie Philip Hoeldt for second degree assault with a deadly weapon.

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

The Washington Office of the Administrator for the Courts maintains a website 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/court-rules/>].

Many United States Supreme Court opinions can be accessed at [<http://supct.law.cornell.edu/supct/index.html>]. This website contains all U.S. Supreme Court opinions issued since 1990 and many significant opinions of the Court issued before 1990. Another website for U.S. Supreme Court opinions is the Court's website at [<http://www.supremecourtus.gov/opinions/opinions.html>]. Decisions of the Ninth Circuit of the U.S. Court of Appeals since January 2000 can be accessed (by date of decision only) by going to the Ninth Circuit home page at [<http://www.ca9.uscourts.gov/>] and clicking on "Opinions." Opinions from other U.S. circuit courts can be accessed by substituting the circuit number for "9" in this address. Federal statutes can be accessed at [<http://www.law.cornell.edu/uscode/>].

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 2006, is at [<http://www1.leg.wa.gov/legislature>]. Information about bills filed since 1997 in the Washington Legislature is at the same address. "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 proposed WAC amendments is at this address too. 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 [<https://fortress.wa.gov/cjtc/www/led/ledpage.html>], while the address for the Attorney General's Office home page is [<http://insideago>].

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. LEDs from January 1992 forward are available via a link on the CJTC Internet Home Page [<https://fortress.wa.gov/cjtc/www/led/ledpage.html>]