SUBJECT MATTER INDEX FOR LED'S FROM 2004-2008

Introductory Note: The following Law Enforcement Digest Subject Matter Index covers five years of LED's from January 2004 through December 2008. This cumulative index was constructed primarily by merging annual indexes which appeared in the December LED's for 2004-2008. Under each topical heading, the cases are listed in ascending chronological order. This index and five-year indexes covering LED's for 1989-1993, 1994-1998 and 1999-2003 are accessible by a "Law Enforcement Digest" link on the Criminal Justice Training Commission's Internet Home Page at [https://fortress.wa.gov/cjtc/www/]. Also available by the same link on the CJTC's Home Page are monthly LED's from January 1992 to present and some other law enforcement legal research tools and links.

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Entries regarding decisions of the Ninth Circuit of the U.S. Court of Appeals include the dates of filing of the decisions. That is because one can access published Ninth Circuit decisions filed since January of 1997 on the Court's internet home page at [http://www.ca9.uscourts.gov/] by clicking on "Opinions" and matching the date of filing with the case name.

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ABATEMENT OF CONVICTION BY DEATH

Death of defendant with appeal pending does not automatically "abate" conviction. State v. Devin, 158 Wn.2d 157 (2006) – October 06:16

ACCOMPLICE LIABILITY (RCW 9A.08.020)

Evidence (1) that defendant knew - - and that other participant did not know - - target home's security code, and (2) that defendant was one of three persons seen running from burgled premises, held sufficient to support his convictions for burglary and theft based on accomplice theory; hence, court rejects defendant's claim that he was a non-participant who just happened to be at the scene. State v. B.J.S., 137 Wn. App. 622 (Div. II, 2007) – January 08:12

Where motor vehicle passenger was injured in a DUI crash, she was a "victim" under RCW 9A.08.020(5), and therefore she could not lawfully be convicted of DUI as an accomplice. State v. Hedlund, 137 Wn. App. 494 (Div. I, 2007) – January 08:22

ALIENS (See "Vienna Convention on Consular Relations")

ANIMAL CRUELTY (Chapter 16.52 RCW)

Evidence of malnourishment, poor dentition held sufficient to support convictions for second degree animal cruelty. State v. Zawistowski, 119 Wn. App. 730 (Div. II, 2004) – March 04:14

Animal cruelty – evidence that young men shot dog several times with arrows held sufficient to support convictions, despite their claims that they were just "putting down" a stray dog. State v. Paulson, 131 Wn. App. 579 (Div. II, 2006) – April 06:08

ARMED CRIME SENTENCE ENHANCEMENT (RCW 9.94A.602) (See also "Sentencing")

Officers acted lawfully in attempt to contact arrest warrant subject by daylight approach to home on rural property despite "no trespassing" sign - - area was "impliedly open" to public and officers were on "legitimate police business." Also, probable cause for search warrant for meth operation held sufficient and not stale. But meth manufacturing sentencing enhancements for "armed" crime and for manufacturing in presence of minor reversed. State v. Ague-Masters, 138 Wn. App. 86 (Div. II, 2007) – August 07:15

Methamphetamine, gun and loaded magazine in backpack behind the driver's side front seat of pickup justifies sentence enhancement for driver's being "armed with a deadly weapon." State v. Gurske, 120 Wn. App. 63 (Div. III, 2004) – April 04:11. Note that this decision was reversed by the Washington Supreme Court; see below, this topic.

Armed-with-a-deadly-weapon evidence held sufficient to support sentencing enhancement under RCW 9.94A.602 in relation to convictions for burglary and theft. State v. Willis, 153 Wn.2d 366 (2005) - March 05:08

Sentencing enhancements for being armed while committing crime of unlawful possession of a controlled substance does not have proof "element" of knowledge of presence of firearm. State v. Barnes, 153 Wn.2d 378 (2004) - March 05:11

Armed-with-a-deadly-weapon sentence enhancement not justified where driver in constructive possession of methamphetamine could not reach the gun without moving from driver's seat to passenger seat. State v. Gurske, 155 Wn.2d 134 (2005) – November 05:08

Moving rifle onto a bed, but not taking it, during an interrupted burglary does not constitute being "armed" for purposes of either (1) burglary-in-the-first degree statute, or (2) "armed crime" sentence enhancement under RCW 9.94A.533(3). State v. Brown, 162 Wn.2d 422 (2007) – August 08:04

ARREST, STOP AND FRISK

Probable cause to arrest: Totality of circumstances gave officer probable cause to believe that front-seat passenger constructively possessed cocaine that was found in back seat area of car. Maryland v. Pringle, 124 S.Ct. 795 (2003) – Feb 04:02. Note that in State v. Grande, 164 Wn.2d 135 (2008) September 08:07, the Washington Supreme Court applied a more restrictive rule against law enforcement on analogous facts; see below, this topic.

Police roadblock checkpoint to ask motorists about recent fatal hit-and-run MVA passes muster under Fourth Amendment; closer question would be presented under Washington constitution. Illinois v. Lidster, 124 S.Ct. 885 (2004) – March 04:02

Failure to transfer MV title not a "continuing" offense – arrest and "search incident" held unlawful. State v. Green, 150 Wn.2d 740 (2004) – March 04:08; May 04:02. Note that the relevant statute was amended in 2008 to make the failure-to-transfer-title offense a "continuing" offense; see May 08:7-8.

Civil liability – where person is jailed after arrest on warrant, jail personnel must release detainee at point when they should know detainee is not person named on warrant. Stalter v. Washington, Pierce County, and others, 151 Wn.2d 148 (2004) – June 04:10

Under the 4th and 5th Amendments of the U.S. Constitution, a domestic violence suspect who refused to identify himself while lawfully being held in a Terry stop could be convicted under the clear wording of a narrow Nevada "stop-and-identify" statute (beware -- Washington state has no such statute). Hiibel v. Sixth Judicial Dist of Nevada, Humboldt County, 124 S.Ct. 2451 (2004) – August 04:02

Under Washington state constitution's article 1, section 7, officer's routine request to non-violator passenger to show ID during vehicle stop is "seizure" requiring independent justification. State v. Rankin, 151 Wn.2d 689 (2004) – August 04:07

Car stop based on Arizona DMV computer database held lawful even though database was inaccurate on this occasion. U.S. v. Miguel, 368 F.3d 1150 (9th Cir. 2004) (decision filed May 27, 2004) – September 04:10

DOL information held to establish probable cause to arrest for DWLS. State v. Gaddy, 152 Wn.2d 64 (2004) – September 04:19

Knocking on window of sleepers-occupied car parked in Denny's restaurant parking lot was not a "seizure." State v. Cerrillo, 122 Wn. App. 341 (Div. III, 2004) – October 04:14

State wins on issues of 1) probable cause for search warrant; 2) justification for Terry seizure and frisk; and 3) sufficiency of evidence to support conviction for methamphetamine manufacturing. State v. Jacobs, 121 Wn. App. 669 (Div. II, 2004) – November 04:08

Vehicle operator's advance consent to search vehicle was voluntary; but police seizure of passenger at gunpoint was not justified, and passenger's consequent abandonment of illegal drugs was involuntary. State v. Reichenbach, 153 Wn.2d 126 (2004) – January 05:02

Federal civil rights lawsuit – regardless of the specific offense that officers identify at the time of arrest or booking, the known facts giving probable cause for a lawful arrest as to any crime will support the arrest for purposes of defending against section 1983 civil rights action under qualified immunity doctrine. Devenpeck v. Alford, 125 S.Ct. 588 (2004) – February 05:02

Fourth Amendment does not restrict law enforcement use of dog to sniff at exterior of car at traffic stop if duration of stop not extended by sniffing, even though this sniffing may have expanded scope of traffic stop investigation; different rule might apply under Washington constitution's article 1, section 7. Illinois v. Caballes, 125 S.Ct. 834 (2005) – March 05:03

Aggressive "felony stop" measures were justified by reasonable safety concerns and did not convert Terry seizure into an arrest. U.S. v. Sandoval, 390 F.3d 1077 (9th Cir. 2004) (decision filed November 19, 2004) – March 05:06

Vehicle stop upheld based solely on registered owner's suspended driver's license status – pre-stop corroboration of the statutorily recognized reasonable suspicion that the driver is the suspended registered owner ordinarily is not required. State v. Phillips, 126 Wn. App. 584 (Div. III, 2005) – June 05:07

Idaho law on interstate fresh pursuit justified WSP trooper's pursuit and seizure of DUI suspect at Idaho hospital based on reasonable suspicion; also probable cause that was developed in the ongoing investigation justified a subsequent blood test. In re Richie, 127 Wn. App. 935 (Div. III, 2005) – August 05:11

Rankin's restriction against asking non-violator motor vehicle passengers for identification documents also bars asking such non-violator passengers for name, date of birth and area of residence. In re Brown, 154 Wn.2d 787 (2005) – September 05:17

Citizen informant and his report of a possible crime (gun possession by a youth) held not reliable and hence seizure is held unlawful where officers made seizure based on dispatch report of a 911 phone caller who gave his name and reported that a person he believed to be 17 years old was carrying a handgun. State v. Hopkins, 128 Wn App. 855 (Div. II, 2005) – October 05:09

Rankin rule does not prohibit officers from requesting ID or requesting identifying information from a person who is inside a parked car that is not the subject of a stop or other seizure. State v. Mote, 129 Wn. App. 276 (Div. I, 2005) – November 05:10

Washington Supreme Court's 2004 ruling in Green case barring custodial arrest for failure to transfer title is extended by Court of Appeals to Terry stop to investigate on reasonable suspicion. State v. Walker, 129 Wn. App. 572 (Div. III, 2005) – November 05:22. Note that the relevant statute was amended in 2008 to make the failure-to-transfer-title offense a "continuing" offense; see May 08:7-8.

Officer's warrantless stop of car registered to person listed as "missing/endangered" was reasonable under "community caretaking function" exception to warrant requirement; also, examination of suspect's forearm did not exceed lawful scope of detention. State v. Moore, 129 Wn. App. 870 (Div. I, 2005) – January 06:07

Terry seizure of reckless driving suspect held justified by reasonable suspicion; also, Miranda warnings held not required in Terry stop questioning. State v. N.M.K., 129 Wn. App. 155 (Div. I, 2005) – January 06:14

Redmond v. Moore does not mean that pre-2005 arrests for DWLS third degree were unlawful arrests. State v. Carnahan, 130 Wn. App. 159 (Div. II, 2005); State v. Potter, 129 Wn. App. 494 (Div. III, 2005); State v. Olinger, 130 Wn. App. 22 (Div. III, 2005); State v. Holmes, 129 Wn. App. 24 (Div. I, 2005); and State v. Pacas, 130 Wn. App. 446 (Div. III, 2005) – January 06:22. Note that the Washington Supreme Court affirmed in the Potter and Holmes cases; see below, this topic.

Officer checking occupied car for possible non-traffic civil infraction was justified by officer-safety concerns in searching car for handgun after seeing open handgun case in car. State v. Day, 130 Wn. App. 622 (Div. III, 2005) – March 06:10. Note that this decision was reversed by the Washington Supreme Court; see below, this topic.

Separate purchases, close in time, by two unkempt men – one buying muriatic acid and the other buying denatured alcohol did not give reasonable suspicion for Terry stop. State v. Carlson, 130 Wn. App. 589 (Div. III, 2005) – March 06:13

Federal Civil Rights lawsuit – known facts giving probable cause for a lawful arrest as to crime of impersonating an officer held to support arrest for purposes

of defending against section 1983 civil rights action under "qualified immunity" doctrine. Alford v. Haner, 446 F.3d 935 (9th Cir. 2006) (decision filed April 26, 2006) – May 06:08. Note that this decision was made following a remand of the case from the U.S. Supreme Court; the U.S. Supreme Court decision remanding the case was captioned Devenpeck v. Alford and was digested in the February 2005 LED starting at page 2 (see above, this topic).

Supreme Court upholds searches incident to arrests for DWLS in the third degree that were made before the Supreme Court decided Redmond v. Moore. State v. Potter, State v. Holmes, 156 Wn.2d 835 (2006) – May 06:14

Probable cause for arrest found; also, county ordinance prohibiting possession of drug paraphernalia with intent to use is upheld against preemption attack. State v. Fisher, 132 Wn. App. 26 (Div. I, 2006) – May 06:16

Expansion of traffic stop based on driver's dilated pupils held justified. State v. Santacruz, 132 Wn. App. 615 (Div. III, 2006) – May 06:18

"Pretext stop" issue must be addressed on remand in case where officer testified that, before the officer observed a driver commit a traffic violation, the officer noticed a "deer in the headlights" look on the face of the driver. State v. Meckelson, 133 Wn. App. 431 (Div. III, 2006) – August 06:12

RCW 10.31.100 exception to common law "misdemeanor presence" limit on warrantless custodial arrest is held constitutional. State v. Walker, 157 Wn.2d 307 (2006) – September 06:07

Where postal inspectors had no objective basis for believing postal employee was armed, their frisk was unlawful. U.S. v. Flatter, 456 F.3d 1154 (9th Cir. 2006) (decision filed August 9, 2006) – October 06:05

Frisking officer's action of seizing and searching item is held justified where he testified that, at the time of the frisk, he believed the item he had patted through the outside of the defendant's pocket could be or could contain a weapon. U.S. v. Hartz, 458 F.3d 1011 (9th Cir. 2006) (decision filed August 17, 2006) – October 06:02

High crime area with history of vehicle prowls in the past, plus midnight hour and suspect's nervous manner do not add up to particularized "reasonable suspicion" that would justify a Terry stop. State v. Martinez, 135 Wn. App. 174 (Div. III, 2006) – October 06:09

Custodial arrest upheld for driving with expired trip permit - - offense held to have been committed in officer's presence. State v. Holmes, 135 Wn. App. 588 (Div. II, 2006) Dec 06:19

Facts of traffic violator's 1) gang affiliation and 2) prior prison sentence for firearm crime did not give officers reasonable suspicion of crime per Terry v. Ohio that would justify expanding questioning beyond initial purpose of traffic stop. U.S. v. Mendez, 467 F.3d 1162 (9th Cir. 2006) (decision filed Oct. 30, 2006) – January 07:06. Note that this opinion was later withdrawn, and that a revised opinion was issued upholding the stop; see below, this topic.

Scope of Terry frisk is restricted – cigarette pack held not to be likely container of weapon; officer is quite a bit off the mark in his testimony about the purpose of conducting a frisk. State v. Horton, 136 Wn. App. 29, (Div. III, 2006) – January 07:09

Protective sweep held justified under facts of case even though one of two armed robbery suspects had already been seized outside of illegal gambling rooms. U.S. v. Paopao, 469 F.3d 760 (9th Cir. 2006) (decision filed Nov. 22, 2006) – February 07:02

Bench warrant that was issued without a finding of probable cause held invalid, and therefore evidence seized in a search incident to arrest is suppressed. State v. Parks, 136 Wn. App. 232 (Div. I, 2006) – February 07:23

Officer's continuation of detention after his original suspicions were dispelled held unlawful; "abandoned" property theory of State also rejected. State v. Veltri, 136 Wn. App. 818 (Div. III, 2007) – March 07:22

Ninth Circuit panel reverses itself – because the police questioning of a traffic violator about his gang affiliation and prior prison sentence for a firearm crime did not extend duration of traffic stop beyond the time required for a record check, no Fourth Amendment violation occurred. U.S. v. Mendez, 476 F.3d 1077 (9th Cir. 2007) (decision filed February 23, 2007) – April 07:02

Look-alike brother of person wanted under felony arrest warrant loses challenge to frisk because 1) officer observed large pocket bulge, 2) officer then felt hard object, and 3) suspect then pulled away to try to avoid continuation of the frisk. State v. Bee Xiong, 137 Wn. App. 720 (Div. III, 2007) – May 07:19

Suspects' tandem purchase of multiple meth precursor items, plus a history of such purchases for one of the suspects, held to be reasonable suspicion for Terry stop. State v. Keller-Deen, 137 Wn. App. 396 (Div. III, 2007) – June 07:10

Where officer heard snorting sound and then saw defendant in toilet stall with two men, one of whom had what appeared to be cocaine in his hand, officer lacked probable cause to arrest defendant. State v. Chavez, 138 Wn. App. 29 (Div. III, 2007) – June 07:16

Where officer making traffic stop knew about a no-contact order protecting driver, but knew no identifying information other than the gender-ambiguous name of the prohibited person on that order, officer could not lawfully ask either the

passenger or the driver for the passenger's ID or identifying information. State v. Allen, 138 Wn. App. 893 (Div. II, 2007) – July 07:21

When officer makes unlawful stop of a vehicle, both the driver and the passengers have been unlawfully seized. Brendlin v. California, 127 S.Ct. 2400 (2007) – August 07:02

Pretext stop argument is rejected by unanimous court where officer, while noting the vehicle may be trying to avoid driving in front of his observation point, went after the vehicle only after observing two violations committed in quick succession. State v. Nichols, 161 Wn.2d 1 (2007) – September 07:10

Car frisk upheld where officer-safety concerns were based on a 7-year-old child's report that a car's driver had pointed a gun at the child; court also rules that search was conducted "incident to arrest" (but this alternative ruling is questionable under the definition of "arrest" indicated in State v. Radka and State v. O'Neill precedents). State v. Glenn, 140 Wn. App. 627 (Div. I, 2007) – November 07:08

In an independent grounds ruling under article 1, section 7 of the Washington constitution, the Washington Supreme Court holds that police stop-and-frisk authority per Terry v. Ohio does not extend to investigation of any civil, non-traffic matters, including civil parking infractions. State v. Day, 161 Wn.2d 889 (2007) – December 07:18

Corpus delicti, sufficiency of evidence, and ID-request-to-passenger questions addressed in prosecution for robbery, possession of ephedrine with intent to manufacture meth, and attempted manufacture of meth. State v. Brockob, 159 Wn.2d 311 (2007) – February 08:08

Two of three judges on Court of Appeals panel agree that seizure of a probable witness to reckless driving was not justified, but the three separate opinions of the three judges on the panel give mixed signals. State v. Carney, 142 Wn. App. 197 (Div. II, 2007) – February 08:17

False arrest civil suit must go to trial on question of whether officer had probable cause to arrest for obstructing. Bishop v. City of Spokane, 142 Wn. App. 165 (Div. III, 2007) – February 08:22

Totality-of-the-circumstances standard held to limit Terry stops for "previously committed" gross misdemeanors and misdemeanors that do not have potential for ongoing or repeated danger or any risk of escalation. U.S. v. Grigg, 498 F.3d 1076 (9th Cir. 2007) (decision filed August 22, 2007) – April 08:06

Court holds in civil rights lawsuit that officers lacked probable cause to arrest man suspected of passing counterfeit bills. Rodis v. City and County of San Francisco, 499 F.3d 1094 (9th Cir. 2007) (decision filed August 28, 2007) – April 08:10

In internal affairs investigation following use-of-force incident, officers' Fourth Amendment and Fifth Amendment rights were not violated. Aguilera v. Baca, 510 F.3d 1161 (9th Cir. 2007) (decision filed December 27, 2007) – April 08:13

Reasonable suspicion supported Terry stop of possible prowler who was found inside storage unit area at 2:30 a.m., was driving without car lights, and was known from past contacts not to be a renter; also, duration of Terry detention was reasonable. State v. Bray, 143 Wn. App. 148 (Div. III, 2008) – April 08:16

Brief expansion of duration of traffic stop to ask about possible illegal drugs held ok under Fourth Amendment despite officer's lack of reasonable suspicion regarding drugs - - Washington constitution might require a different result in light of officer's expansion of scope of investigation. U.S. v. Turvin, 517 F.3d 1097 (9th Cir. 2008) (decision filed February 26, 2008) – May 08:07

Probable cause to arrest long-time fifth grade teacher for sexual assault on student precludes teacher's civil rights suit that challenged her being arrested and taken out of the school in handcuffs. John v. City of El Monte, 505 F.3d 907 (9th Cir. 2007) (decision filed September 26, 2007; amended opinion filed February 5, 2008) – May 08:11

Bench warrant for failure to appear for post-conviction probation court review justifies arrest despite lack of court finding of probable cause as to probation violation. State v. Erickson, 143 Wn. App. 660 (Div. I, 2008) – June 08:21

Suspect's 1) eyes getting big at seeing police, 2) furtive gesture, and 3) walkaway as officer's came back toward him do not add up to reasonable suspicion for Terry stop; Supreme Court does not address the fact that his walkaway from the officers was jaywalking in their presence. State v. Gatewood, 163 Wn.2d 534 (2008) – July 08:04

Officer could not lawfully frisk a lawfully seized man based solely on fact that the man was nervous and fidgeting. State v. Setterstrom, 163 Wn.2d 621 (2008) – July 08:06

Frisk of mere passenger in stolen car held not supported by trial court's findings of fact that did not show any danger presented by the passenger. State v. Adams, 144 Wn. App. 100 (Div. III, 2008) – July 08:14

Officer's late-night social contact of pedestrian, followed by officer's patdown of pedestrian's pockets when pedestrian kept putting his hands in and out of his

pockets, held lawful. State v. Harrington, 144 Wn. App. 558 (Div. III, 2008) – July 08:17

Late night stop of fast-moving unlit bicycle heading away from area of "shots fired" reports held lawful Terry stop based on reasonable suspicion. State v. Rowell, 144 Wn. App. 453 (Div. III, 2008) – July 08:19

Pretext stop ruling is based on officer's mere hunch and his hunch-inspired surveillance, followed by his stop of the suspect van, purportedly for driving a short distance without headlights. State v. Montes-Malindas, 144 Wn. App. 254 (Div. III, 2008) – July 08:21

Officer's request for voluntary production of ID from person who had just parked and gotten out of his car was not a seizure. State v. Vanderpool, 144 Wn. App. 254 (Div. III, 2008) – August 08:06

Officer's seizure of potential witness was not justified where there were no exigent circumstances, not even a recent report of a crime. State v. Dorey, 145 Wn. App. 423 (Div. III, 2008) – August 08:08

Officers acted lawfully in continuing contact with would-be victim-witness who alleged that he had been robbed, but who himself became a suspect for drug possession. State v. Mitchell, 145 Wn. App. 1 (Div. I, 2008) – August 08:11

Moderate odor of marijuana coming from vehicle during traffic stop did not provide probable cause to arrest passenger under article 1, section 7 of the Washington constitution. State v. Grande, 164 Wn.2d 135 (2008) – September 08:07

Traffic stop held not justified where driver crossed an eight-inch wide exit lane divider by two tire lengths for one second. State v. Prado, 145 Wn. App. 646 (Div. I, 2008) – September 08:16

Extending detention of protestors while waiting for a supervisor to help officers interpret the law was not reasonable. Center for Bio-Ethical Reform, Inc. v. Los Angeles County Sheriff's Department, 533 F.3d 780 (9th Cir. 2008) (decision filed July 2, 2008) – October 08:11

Six-pack of photos used for identification held to be sufficiently questionable to help support civil rights plaintiff's claim he was arrested without probable cause. Torres v. City of Los Angeles, 540 F.3d 1031 (9th Cir. 2008) (decision filed August 26, 2008) – October 08:12

Court upholds multi-million dollar verdict for LAPD officers in their civil rights lawsuits against agency for arresting the officers without probable cause. Harper v. City of Los Angeles, 533 F.3d 1010 (9th Cir. 2008) (decision filed July 14, 2008) – October 08:14

Delayed frisk of handcuffed, cooperative brother of a warrant subject (in mistaken-identity seizure) held not supported by reasonable belief that detainee was presently armed and dangerous. State v. Xiong, __ Wn.2d __ , 191 P.3d 1278 (2008) – November 08:02

Citizen's report of man 1) acting bizarrely and erratically, 2) possibly "on drugs," and 3) possibly dangerous to others or himself justified officer's Terry stop of the man; also, even if Terry stop was not justified, that would not provide a defense for the detainee's first degree assault on officer with a screwdriver. State v. Kolesnik, __ Wn. App. __ , 193 P.3d 937 (Div. I, 2008) - November 08:06

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

"Putting another in apprehension" under common law definition of "assault" means putting the threatened person in apprehension. State v. Nicholson, 119 Wn. App. 855 (Div. II, 2004) – April 04:19

Evidence sufficient to convict for HIV assault and witness tampering. State v. Whitfield, 132 Wn. App. 787 (Div. II, 2006) – September 06:15

Father's defenses of corpus delicti, consent and religious freedom rejected in assault-of-child prosecution that arose from his attempt at do-it-himself, amateur circumcision of his 8-year-old son. State v. Baxter, 134 Wn. App. 587 (Div. II, 2006) – October 06:17

Willfully spitting on a person at a VA medical center held to be an assault under federal criminal law. U.S. v. Llewellyn, 481 F.3d 695 (9th Cir. 2007) (decision filed March 7, 2007) – June 07:10 (Washington case law is to the same effect under chapter 9A.36 RCW)

Evidence of intent element held sufficient in assault case where defendant drove his car into two police vehicles. State v. Baker, 136 Wn. App. 878 (Div. III, 2007) – June 07:12

Consent defense is not allowed for assault occurring in prison. State v. Weber, 137 Wn. App. 852 (Div. III, 2007) – September 07:22

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. State v. Elmi, 138 Wn. App. 306 (Div. I, 2007) – October 07:24

Pit bull that attacked police officer was a "deadly weapon" for purposes of second degree assault statute. State v. Hoeldt, 139 Wn. App. 225 (Div. II, 2007) – October 07:24

Court rejects 1) claim of constitutional right to jury trial in juvenile court, and 2) constitutional challenge to Legislature's use of common law definition of assault. State v. Chavez, 163 Wn.2d 262 (2008) – October 08:16

ATTEMPT (Chapter 9A.28 RCW)

Defendant may be convicted of attempted possession of child pornography based upon the defendant's possession of materials that appear to be child pornography but may in fact not depict actual minors. State v. Luther, 125 Wn. App. 176 (Div. I, 2005) – March 05:21. Note that the Washington Supreme Court affirmed this Court of Appeals decision; see below, this topic.

Evidence held sufficient to support conviction for attempted first degree theft in case involving police sting of defendants who told major lies in "selling" a used truck to the officers. State v. George (and George), 132 Wn. App. 654 (Div. I, 2006) – September 06:11

Evidence held insufficient to convict for theft because attempt to "hot wire" car was never completed. State v. R.L.D., 132 Wn. App. 699 (Div. II, 2006) – September 06:21

Attempted burglary conviction upheld: evidence of intent to commit crime within building by forcibly taking son from estranged wife held sufficient to prove that necessary element. State v. Powell, 139 Wn. App. 808 (Div. II, 2007) – January 08:10

There is no such crime as "attempted felony murder" under Title 9A RCW. In re Personal Restraint of Richey, 162 Wn.2d 865 (2008) – May 08:17

BAIL JUMPING (RCW 9A.76.170)

"I forgot" is not a valid defense to bail-jumping charge. State v. Carver, 122 Wn. App. 300 (Div. II, 2004) – November 04:22

BOMB THREATS (RCW 9.61.160)

Bomb threat conviction under RCW 9.61.160 reversed – man who was drunk when, during his detention by airport police, he threatened to "blow this place up," is entitled to a new trial with jury instructions reflecting "true threat" standard created to protect free speech under the First Amendment. State v. Johnston, 156 Wn.2d 355 (2006) – March 06:04

BRIBERY AND RELATED LAWS (Chapter 9A.68 RCW)

Drunk boater's offer to give his sinking boat to onlookers in exchange for a ride and for their silence as to his crime held not bribery (some of the appellate court's reasoning is questioned by the LED Editors). State v. Henjum, 136 Wn. App. 807 (Div. III, 2007) – August 07:23

BURGLARY (Chapter 9A.52 RCW)

Violation of protection order can be predicate "crime against a person" under residential burglary statute. State v. Stinton, 121 Wn. App. 569 (Div. II, 2004) – July 04:20

"Dwelling"? Jury must decide close factual question of status of unoccupied residential structure that was being renovated. State v. McDonald, 123 Wn. App. 85 (Div. II, 2004) – November 04:12

As a "continuing offense," violation of a DV no-contact order held to be predicate offense justifying burglary charge. State v. Spencer, 128 Wn. App. 132 (Div. I, 2005) – December 05:21

Court addresses meaning of "enters unlawfully" and "remains unlawfully" in burglary statutes. State v. Allen, 127 Wn. App. 125 (Div. I, 2005) – February 06:23

Burglary conviction is held supported by testimony of real estate agent who had the only keys to unoccupied home, as showing defendant's lack of permission to be on property; also, defendant's "abandoned property" defense is rejected where the unoccupied home was being prepared for sale at the time of the alleged crime. State v. J. P., 130 Wn. App. 887 (Div. III, 2005) – April 06:11

Home's detached garage without overhead door held to be "building" under burglary statute. State v. Johnson, 132 Wn. App. 400 (Div. II, 2006) – July 06:22

Because a no-contact order did not bar the defendant from living at a particular address, his entry of the residence that he shared with the person protected by the order was not a per se unlawful entry of the house under the burglary statute. State v. Wilson, 136 Wn. App. 596 (Div. II, 2007) – April 07:17

Attempted burglary conviction upheld: evidence of intent to commit crime within building by forcibly taking son from estranged wife held sufficient to prove that necessary element. State v. Powell, 139 Wn. App. 808 (Div. II, 2007) – January 08:10

Evidence (1) that defendant knew - - and that other participant did not know - - target home's security code, and (2) that defendant was one of three persons seen running from burgled premises, held sufficient to support his convictions for burglary and theft based on accomplice theory; hence, court rejects defendant's claim that he was a non-participant who just happened to be at the scene. State v. B.J.S., 137 Wn. App. 622 (Div. II, 2007) – January 08:12

Where there was evidence that defendant used a machete to break into a home, and that he took the machete into the premises, the evidence was sufficient to support his first degree burglary conviction; from this evidence, the jury could conclude that he was "armed" with a machete when he burglarized the house. State v. Gamboa, 137 Wn. App. 650 (Div. III, 2007) – January 08:16

Moving rifle onto a bed, but not taking it, during an interrupted burglary does not constitute being "armed" for purposes of either (1) burglary-in-the-first degree statute, or (2) "armed crime" sentence enhancement under RCW 9.94A.533(3). State v. Brown, 162 Wn.2d 422 (2007) – August 08:04

CHILD PORNOGRAPHY (RCW 9.68A.070)

Defendant may be convicted of attempted possession of child pornography based upon the defendant's possession of materials that appear to be child pornography even if the materials in fact do not depict actual minors. State v. Luther, 125 Wn. App. 176 (Div. I, 2005) – March 05:21. Note that the Washington Supreme Court affirmed this decision; see below, this topic.

Evidence taken from computer's hard drive, together with 10-year-old child's testimony, held sufficient to support conviction for accessing depictions of children engaged in sexually explicit conduct. State v. Mobley, 129 Wn. App. 378 (Div. III, 2005) – February 06:10

Defendant may be convicted of attempted possession of child pornography based upon the defendant's possession of materials that appear to be child pornography even if the materials in fact do not depict actual minors. State v. Luther, 157 Wn.2d 63 (2006) – August 06:11

Resident at McNeil Island Special Commitment Center loses challenges: 1) to SCC staff's warrantless seizure of his computer, and 2) to his child pornography conviction under RCW 9.68A.070. State v. Williams, 135 Wn. App. 915 (Div. II, 2006) – January 07:21

Child porn search warrant execution held timely despite long delay in completion of computer search; affidavit held to meet constitutional probable cause and particularity requirements; also, State wins on sufficiency of evidence issue; but discovery issue requires reversal of child porn counts. State v. Grenning, 142 Wn. App. 518 (Div. II, 2008) – March 08:15

Child pornography conviction overturned where defendant had taken pictures of his 15-year-old stepdaughter without her knowledge - - this was voyeurism, not child pornography. State v. Whipple, 144 Wn. App. 654 (Div. II, 2008) – August 08:20

CITIZEN'S ARREST AND MERCHANT AUTHORITY TO DETAIN SHOPLIFTING SUSPECT

Shoplifter's act of pushing away neighboring store's employee who was attempting to detain him was not assault three, because the employee lacked authority to detain the shoplifter per statute or as "citizen's arrest." State v. Garcia, __ Wn. App. __ , 193 P.3d 181 (Div. III, 2008) – November 08:20

CIVIL LIABILITY

In civil rights case, Fourth Amendment held to have been violated where search was conducted under a warrant in which ATF agent made clerical error by failing to specify the items that were to be seized; qualified immunity is denied to the ATF agent who prepared the warrant, and who led other officers in the search. Groh v. Ramirez, 124 S.Ct. 1284 (2004) – April 04:02

Civil liability – where person is jailed after arrest on warrant, jail personnel must release detainee at point when they should know detainee is not person named on warrant. Stalter v. Washington, Pierce County, and others, 151 Wn.2d 148 (2004) – June 04:10

Using flash-bang device was excessive force where room into which device was blindly tossed was likely to be occupied by innocent bystanders. Boyd v. Benton County (Oregon), 374 F.3d 773 (9th Cir. 2004) (decision filed June 28, 2004) – September 04:09

Jail civil liability: pattern of 26-hour-plus delays in releasing detainees after court authorization may result in civil liability for the county as violation of constitutional rights. Berry v. Baca, 379 F.3d 764 (9th Cir. 2004) (decision filed August 13, 2004) – October 04:05

Based on promises allegedly made, county can be liable under "rescue doctrine" for failure of sheriff's office to adequately warn community about level III sex offender; "public duty" doctrine and statutory-immunity defenses rejected. Osborn v. Mason County, 122 Wn. App. 823 (Div. II, 2004) – October 04:10. Note that the Washington Supreme Court reversed this Court of Appeals decision; see below, this topic.

Good faith immunity provision in firearms statute precludes suit against sheriff's office for delay in approving pistol purchase. Deschamps v. Mason County Sheriff's Office, 123 Wn. App. 551 (Div. II, 2004) – November 04:19

2-1 majority of Ninth Circuit panel holds: 1) arrest of citizen for recording police radio communications without consent while citizen was conversing with officer in a public place was an unlawful arrest because such communications are not "private" under RCW 9.73; 2) no "qualified immunity" because officer should

have known the "well-established" law; 3) agency liability question must go to jury because agency arguably should have given officer specific training on RCW 9.73; and 4) "outrage" issue must go to jury because elements of that tort action are arguably met on plaintiff's allegations. Johnson v. City of Sequim, 388 F.3d 676 (9th Cir. 2004) (decision filed October 25, 2004) – December 04:14

"Public duty doctrine" precludes agency civil liability in 911-response case where dispatcher never was able to communicate with hang-up 911 caller and therefore no "special relationship" was created. Cummins v. Lewis County, 124 Wn. App. 247 (Div. II, 2004) – January 05:11. Note that the Washington Supreme Court affirmed this Court of Appeals decision; see below, this topic.

Federal civil rights lawsuit – regardless of the specific offense that officers identify at the time of arrest or booking, the known facts giving probable cause for a lawful arrest as to <u>any</u> crime will support the arrest for purposes of defending against section 1983 civil rights action under qualified immunity doctrine. Devenpeck v. Alford, 125 S.Ct. 588 (2004) – February 05:02

Federal civil rights lawsuit -- officer who shot suspect because he appeared to be a danger to bystanders and to other officers as he was attempting to flee is held entitled to qualified immunity in section 1983 civil rights action. Brosseau v. Haugen, 125 S.Ct. 596 (2004) – February 05:06

Based on agency relationship created under interlocal cooperation agreement, Snohomish county sheriff's office can be civilly liable for acts of "SNOPAC" in E911 case involving issues of "failure to protect" and "public duty doctrine". Harvey v. County of Snohomish (and others), 124 Wn. App. 806 (Div. I, 2004) – March 05:20. Note that the Washington Supreme Court affirmed this Court of Appeals decision; see below, this topic.

Under the particular facts of the case, search warrant for deadly weapons and evidence of gang membership justified officers in keeping occupants of target residence in handcuffs for duration of search; also, the officers' asking an occupant questions about immigration status did not render detention unlawful under the Fourth Amendment. Muehler v. Mena, 125 S.Ct. 1465 (2005) – May 05:02

Ninth Circuit expands its "deadly force" definition to include force that creates "substantial risk of serious bodily injury;" court states that other federal circuit courts apply the same "deadly force" definition. Smith v. City of Hemet, 394 F.3d 689 (9th Cir. 2005) (decision filed January 10, 2005) – June 05:04

San Jose officers are denied qualified immunity in civil rights case because 1) they seized much more evidence during warrant searches than was "reasonable"; and 2) they shot some dogs due to lack of a prior reasonable plan for entry into the perimeter. San Jose Charter of the Hells Angles Motorcycle Club v. City of San Jose, 402 F.3d 962 (9th Cir. 2005) (decision filed April 4, 2005) – August 05:08

For purposes of section 1983 civil rights action, there is no federal constitutional due process right to have police enforce a restraining order. Town of Castle Rock, Colorado v. Gonzales, 125 S.Ct. 2796 (2005) – September 05:02

California officers not entitled to qualified immunity on excessive force, deceiving-of-magistrate claims. Baldwin v. Placer County, 405 F.3d 778 (9th Cir. 2005) (decision filed April 19, 2005) – September 05:06

Section 1983 civil rights action against police agency upheld in failure-to-protect case on grounds that police increased the risk by giving assault victims a "false sense of security." Kennedy v. City of Ridgefield, 411 F.3d 1134 (9th Cir. 2005) (decision filed June 23, 2005) – September 05:12. Note that the Ninth Circuit 3-judge panel subsequently issued a revised decision, but with no change in result; see below, this topic.

"Vienna Convention on Consular Rights" – Seventh Circuit holds that civil rights act liability is possible for police violation of this treaty. Jogi v. Voges, 425 F.3d 367 (7th Cir. 2005) (decision filed September 27, 2005) – November 05:02. Note that the Ninth Circuit of the U.S. Court of Appeals adopted the opposite view in its 2007 decision in the Cornejo case; see below, this topic.

Failure-to-protect decision grounded in federal constitution's due process clause – adverse to law enforcement – is re-issued. Kennedy v. City of Ridgefield, 439 F.3d 1055 (2006) (decision filed March 7, 2006) – April 06:02

Federal Civil Rights lawsuit – known facts giving probable cause for a lawful arrest as to crime of impersonating an officer held to support arrest for purposes of defending against section 1983 civil rights action under "qualified immunity" doctrine. Alford v. Haner, 446 F.3d 935 (9th Cir. 2006) (decision filed April 26, 2006) – May 06:08. Note that this decision was made following a remand of the case from the U.S. Supreme Court; the U.S. Supreme Court decision remanding the case was captioned Devenpeck v. Alford and was digested in the February 2005 LED starting at page 2 (see above, this topic).

No civil liability – where, in responding to a call regarding a then-occurring home invasion, 911 dispatcher gave no assurances to occupant upon which occupant could have justifiably relied to his detriment, there was no actionable duty of the government. Harvey v. Snohomish County, 157 Wn.2d 33 (2006) – July 06:05

No civil liability – "public duty doctrine" precludes agency civil liability where dispatcher never was able to communicate with hang-up 911 caller, and thus no "special relationship" was created. Cummins v. Lewis County, 156 Wn.2d 844 (2006) – July 06:07

No civil liability – where parents of child killed by registered sex offender were not aware of deputy's prior assurance to another person in the community that he

would send out fliers regarding the offender, county had no actionable duty to the child or parents. Osborn v. DOC and Mason County, 157 Wn.2d 18 (2006) – July 06:11

Unconstitutionality ruling issued as to California county jail's policy that led to strip searching of woman arrested on a misdemeanor charge of being under the influence of a controlled substance. Way v. Ventura County, 445 F.3d 1157 (9th Cir. 2006) (decision filed April 20, 2006) – August 06:05

No qualified immunity for officers - - jury can decide civil rights suit alleging that officers used excessive force against non-suspect, non-resisting, 11-year-old during search warrant execution; ruling is based on youth's claims, among others, that officers: 1) pointed gun at youth for too long and 2) kept him in handcuffs for too long. Tekle v. U.S., 457 F.3d 1088 (9th Cir. 2006) (decision filed August 11, 2006) – October 06:13. Note that on December 3, 2007, the 3-judge panel issued revised separate opinions (not digested in the LED), but the essence of the majority's holding remained the same. See 511 F.3d 839 (9th Cir. 2007)

Jail held civilly liable for violating Washington strip search statute in automatically strip searching arrestee who was in custody pending release on bail. Plemmons v. Pierce County, 134 Wn. App. 449 (Div. II, 2006) – October 06:16

Court upholds jury verdict, including punitive damages, for warrantless entry of residence and for excessive force. Frunz v. City of Tacoma, 468 F.3d 1141 (9th Cir. 2006) (decision filed November 13, 2006) – January 07:02

Inmates' exhibitionist masturbating and other behavior results in sexually hostile environment for which California correctional institution is responsible. Deanna Freitag v. Ayers**,** 468 F.3d 528 (9th Cir. 2006) (decision filed September 29, 2006) – January 07:05

Sheriff's office is subject to civil liability for negligent investigation of sexual abuse—lawsuit against agency by niece who was allegedly victimized by uncle is allowed to go forward. Lewis v. Whatcom County, 136 Wn. App 450 (Div I, 2006) – February 07:25

No qualified immunity from federal civil rights liability for California HP officer who violated several CHP rules in car chase and ultimately shot and killed the chased driver without sufficient justification. Adams v. Speers, 473 F.3d 989 (9th Cir. 2007) (decision filed January 10, 2007) – March 07:02

Civil rights lawsuit – Seattle PD did not violate federal constitution's due process clause by enhancing danger in relation to the February 27, 2001 Seattle Pioneer Square Mardi Gras riot. Johnson v. City of Seattle, 474 F.3d 634 (9th Cir. 2007) (decision filed January 18, 2007) – March 07:06

Payton rule requiring warrant before officers make forcible arrest from residence in

non-exigent circumstances is applied to 12-hour standoff that ended with the barricaded home occupant exiting his home. Fisher v. City of San Jose, 475 F.3d 1049 (9th Cir. 2007) (decision filed January 16, 2007) – March 07:11. Note that on November 20, 2007, the 3-judge panel issued substitute majority and dissenting opinions (not digested in the LED), but the essence of the majority's holding remained the same. See 509 F.3d 952 (9th Cir. 2007); and note further that on March 14, 2008, a full panel of the Ninth Circuit decided to rehear the case, so the earlier decisions were withdrawn and the matter was set for further briefing and argument. See 519 F.3d 908 May 08 LED:16.

Public duty doctrine precludes lawsuit for "negligent infliction of emotional distress" based on officers' delayed discovery during MVA response of injured person in rear of SUV; also, "bystander" negligence rule does not apply. Timson v. Pierce County Fire District 15 and WSP, 136 Wn. App. 376 (Div. II, 2006) – April 07:22

Qualified immunity granted in civil rights lawsuit – officer held reasonable in ending extended, dangerous high speed chase by ramming eluder's car from behind. Scott v. Harris, 127 S.Ct. 1769 (2007) – June 07:08

Officer safety concerns during search warrant execution justified holding two unknown, unclothed adult residents standing at gunpoint for a few minutes. L.A. County v. Rettele, 127 S.Ct. 1989 (2007) – September 07:02

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, 495 F.3d 645 (9th Cir. 2007) (decision filed July 17, 2007) – October 07:02. Note that on May 22, 2008, the 3-judge panel of the Ninth Circuit set aside its July 17, 2007 decision and directed that the matter be reargued to the panel. Edgerly v. City and County of San Francisco, 527 F.3d 841 (9th Cir. 2008) – July 08:03.

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) (decision filed May 8, 2007) – October 07:03

"Vienna Convention on Consular Relations" – Civil Rights Act liability held not to be possible for police violation of this treaty. Cornejo v. County of San Diego, 504 F.3d 853 (9th Cir. 2007) (decision filed September 24, 2007) – November 07:02

"Professional rescue doctrine" does not bar law enforcement officer's lawsuit against his law enforcement employer for injuries sustained when a fellow officer from his agency struck him with a patrol car during a pursuit. Beaupre v. Pierce County, 161 Wn.2d 568 (2007) – December 07:23

WSP may be liable for damages based on former policy of mandatory impound of vehicles of suspended drivers. Potter v. Washington State Patrol, 161 Wn.2d 335 (2007) – February 08:09. Note that the Washington Supreme Court re-heard argument to consider whether the "conversion" theory of the lawsuit is barred on grounds that the exclusive remedy for wrongful impound is under RCW 46.55.120; on November 26, 2008, in a decision that will be digested in the 2009 LED, the Supreme Court ruled against WSP on the exclusive remedy issue.

False arrest civil suit must go to trial on question of whether officer had probable cause to arrest for obstructing. Bishop v. City of Spokane, 142 Wn. App. 165 (Div. III, 2007) – February 08:22

Probable cause to arrest long-time fifth grade teacher for sexual assault on student precludes teacher's civil rights suit that challenged her being arrested and taken out of the school in handcuffs. John v. City of El Monte, 505 F.3d 907 (9th Cir. 2007) (decision filed September 26, 2007; amended decision filed February 5, 2008) – May 08:11

No civil rights act liability under Fourteenth Amendment's due process protections even assuming for the sake of argument that the officer's decision to join a high speed chase and his method of execution in doing so showed poor judgment. Bingue v. Prunchak, 512 F.3d 1169 (9th Cir. 2008) (decision filed January 15, 2008) – May 08:14

Residential arrest under the Fourth Amendment - - panel of fifteen to rehear the Fisher case in which a 3-judge panel applied the Payton rule to a barricade/standoff circumstance. Fisher v. City of San Jose, 519 F.3d 908 (9th Cir. 2008) (9th Circuit order to re-hear case filed March 14, 2008) – May 08:16

Officer's inadvertent use of Glock instead of Taser, an error that was fatal for the detainee, will be reviewed for reasonableness by fact-finder in section 1983 civil rights action. Torres v. Madera, 524 F.3d 1053 (9th Cir. 2008) (decision filed May 5, 2008) – July 08:03

Strip search ruling in section 1983 civil rights lawsuit withdrawn by Ninth Circuit; 3-judge panel to rehear case involving strip search of trespasser at stationhouse. Edgerly v. City and County of San Francisco, 527 F.3d 841 (9th Cir. 2008) (order for rehearing filed May 22, 2008) – July 08:04

Sergeant had privacy interest in text messages viewed in audit - - agency policy stated that agency would monitor electronic communications, but 1) policy did not expressly address text messages, 2) by practice, officers were allowed to simply pay for excess pager usage, and 3) no pager audits had occurred in the past; also, agency was not justified in conducting full search on grounds that the agency was merely trying to determine whether to raise its text-messaging limits.

Quon v. Arch Wireless Operating Company, Inc., 529 F.3d 892 (9th Cir. 2008) (decision filed June 18, 2008) – September 08:03

Section 1983 civil rights case jury upheld on its reasonableness finding where officers waited 5 to 8 seconds, after knocking and announcing, before beginning their efforts to force home's steel security door to execute narcotics search warrant. Howell v. Polk, 532 F.3d 1025 (9th Cir. 2008) (decision filed July 16, 2008) – October 08:03

Satirical message – "I am a . . . suicide bomber terrorist" painted on his van by mild-mannered, anti-government "nut" was protected as "free speech" under the First Amendment. Fogel v. Collins, 531 F.3d 824 (9th Cir. 2008) (decision filed June 27, 2008) – October 08:09

Extending detention of anti-abortion protestors while waiting for a supervisor to help officers interpret the law was not reasonable. Center for Bio-Ethical Reform, Inc. v. Los Angeles County Sheriff's Department, 533 F.3d 780 (9th Cir. 2008) (decision filed July 2, 2008) – October 08:11

San Francisco jail policy of strip searching without reasonable suspicion all pre-trial detainees who are to be placed in general population held to violate Fourth Amendment. Bull v. City and County of San Francisco, 539 F.3d 1193 (9th Cir. 2008) (decision filed August 22, 2008) – October 08:11

Six-pack of photos used for identification held to be sufficiently questionable to help support civil rights plaintiff's claim he was arrested without probable cause. Torres v. City of Los Angeles, 540 F.3d 1031 (9th Cir. 2008) (decision filed August 26, 2008) – October 08:12

Court upholds multi-million dollar verdict for LAPD officers in their civil rights lawsuits against agency for arresting the officers without probable cause. Harper v. City of Los Angeles, 533 F.3d 1010 (9th Cir. 2008) (decision filed July 14, 2008) – October 08:14

Civil rights lawsuit will go forward on plaintiffs' allegations that officers looking for a parole violator unlawfully forced a warrantless entry of their home without probable cause to believe that the parolee lived there. Cuevas v. De Roco, 531 F.3d 726 (9th Cir. 2008) (decision filed June 27, 2008) – October 08:15

"Public duty doctrine" precludes negligence-based lawsuit for arrest on warrant that had been quashed. Vergeson v. Kitsap County, 145 Wn. App. 526 (Div. II, 2008) – October 08:22

Judge's order to deputy sheriff to escort prisoner from courtroom to jail did not give the deputy "judicial immunity" from a civil suit for negligence when the

prisoner escaped en route and caused injury to a courthouse security guard. Lallas v. Skagit County, 144 Wn. App. 114 (Div. I, 2008) – October 08:23

Homeowner's lawsuit for civil trespass against law enforcement for breaking doors in search warrant execution fails because officers were justified in the destructive activity under the circumstances; homeowner's theory of "unconstitutional taking" theory also fails. Brutsche v. City of Kent, __ Wn.2d __, 193 P.3d 110 (2008) – December 08:22

CIVIL SERVICE AND EMPLOYMENT LAW

Arbitrator's award reinstating deputy set aside where, among other things, deputy's record of dishonesty prevented useful service by the deputy. Kitsap Cty Deputy Sheriff's Guild v. Kitsap Cty, 140 Wn. App. 516 (Div. II, 2007) – February 08:24

CIVILIAN JOB PROTECTION WHEN WORKERS ASSIST POLICE

Employee may sue employer for firing him for cooperating with police investigation of his workplace. Gaspar v. Peshastin Hi-Up Growers, 131 Wn. App. 630 (Div. III, 2006) – September 06:23

COMMUNICATING WITH A MINOR FOR IMMORAL PURPOSES (RCW 9.68A.090)

Evidence held sufficient to support convictions for harassment and for communication with a minor for immoral purposes; search warrant withstands challenges based on tests for probable cause, particularity and staleness. State v. Hosier, 124 Wn. App. 696 (Div. I, 2004) **–** May 05:15. Note that the Washington Supreme Court affirmed this Court of Appeals decision; see below, this topic.

Evidence held sufficient to support convictions for communication with a minor for immoral purposes – 1) dad telling victim-daughter about defendant's message, and 2) discovery by non-reading children of another message were each prohibited "communication" circumstances. State v. Hosier, 157 Wn.2d 1 (2006) – August 06:06

CORPUS DELICTI RULE (Common law and RCW 10.58.035)

Despite fact that defendant admitted that he stole pseudoephedrine to pay off a debt to a "meth cook," corpus delicti is held not established for possessing ephedrine or pseudoephedrine with intent to manufacture methamphetamine; thus, confession of defendant is held inadmissible. State v. Whalen, 131 Wn. App. 58 (Div. II, 2005) – March 06:22

Corpus delicti of murder held established based on the totality of the evidence despite the fact that advanced decomposition of body of defendant's ex-girlfriend prevented medical examiner's determination of whether strangulation or drug

overdose was the cause of death. State v. Rooks, 130 Wn. App. 787 (Div. I, 2005) – April 06:14

Father's defenses of corpus delicti, consent and religious freedom rejected in assault-of-child prosecution that arose from his attempt at do-it-himself, amateur circumcision of his 8-year-old son. State v. Baxter, 134 Wn. App. 587 (Div. II, 2006) – October 06:17

Corpus delicti for "driving" element of DUI established by proof that wrecked car was registered to defendant and he was the only person found in the area of the one-car accident. State v. Hendrickson, 140 Wn. App. 913 (Div. II, 2007) – January 08:08

Corpus delicti, sufficiency of evidence, and ID-request-to-passenger questions addressed in prosecution for robbery, possession of ephedrine with intent to manufacture meth, and attempted manufacture of meth. State v. Brockob, 159 Wn.2d 311 (2007) – February 08:08

RCW 10.58.035's relaxing of corpus delicti rule held constitutional, but the statute may be reduced to little effect. State v. Dow, 142 Wn. App. 971 (Div. II, 2008) – May 08:22. Note that the Washington Supreme Court is reviewing this decision of the Court of Appeals.

CRIMINAL MISTREATMENT (Chapter 9A.42 RCW)

Evidence held sufficient to support convictions for unlawful possession of firearm, unlawful manufacture of a controlled substance, and criminal mistreatment; evidence also supports sentence enhancement for meth manufacturing with children present. State v. Holt, 119 Wn. App. 712 (Div. II, 2004) – March 04:18

CRIMINAL RULE 3.1 (and CrRLJ 3.1)

Partially handcuffed murder suspect's waiver of Fifth and Sixth Amendment rights prior to custodial questioning by FBI agents valid - - and Criminal Rule 3.1 not violated - - because, although suspect asked agents about the process for appointing counsel, he made clear that he was willing to be questioned without a lawyer; also, jailhouse informant could testify because police did not make him their "agent" for Sixth Amendment purposes. State v. Whitaker, 135 Wn. App. 923 (Div. I, 2006) – August 06:18

DUI arrestee changed his mind about contacting counsel and therefore CrRLJ 3.1 was not violated by law enforcement officer. State v. Kronich, 131 Wn. App. 537 (Div. III, 2006) – April 06:03

DANGEROUS WEAPONS (RCW 9.41.280)

Juvenile student's 16-inch dagger with 10-inch blade held a "dangerous weapon" under RCW 9.41.280, statute prohibiting "dangerous weapon" on K-12 school premises. State v. J. R., 127 Wn. App. 293 (Div. I, 2005) – December 05:22

DEFRAUDING OF PUBLIC UTILITY (Chapter 9A.61 RCW)

Evidence of "tampering" and of "furtherance of other crime" held sufficient to support conviction for first degree "defrauding of public utility." State v. Silva, 127 Wn. App.148 (Div. I, 2005) – August 05:19

DISCOVERY OF EVIDENCE UNDER COURT RULES (See also "Due Process, Including Brady Rule")

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) – October 07:10

Child porn search warrant execution held timely despite long delay in completion of computer search; affidavit held to meet constitutional probable cause, particularity requirements; also, State wins on sufficiency of evidence; but discovery issue requires reversal of child porn counts. State v. Grenning, 142 Wn. App. 518 (Div. II, 2008) – March 08:15

DOMESTIC VIOLENCE (INCLUDING PROTECTION ORDERS)

Knowledge, not personal service, of a DVPA protection order is the prerequisite to a criminal charge for violation of the DVPA protection order. City of Auburn v. Solis-Marcial, 119 Wn. App. 398 (Div. I, 2003) – February 04:12

Evidence Rule 408 does not bar admission of evidence that DV defendant independently paid for damages. State v. O'Connor, 119 Wn. App. 530 (Div. I, 2003) – February 04:19

Evidence held sufficient to support conviction for violating restraining order by making phone calls. State v. Van Tuyl, 132 Wn. App. 750 (Div. III, 2006) – September 06:13

Inmate receiving visitor at jail violated no-contact order; also, circumstances surrounding an assault in a car support a separate unlawful imprisonment conviction. State v. Washington, 135 Wn. App. 42 (Div. I, 2006) – October 06:11

DVPA prosecution – evidence held sufficient to prove that defendant knew where protected person resided. State v. Vant, 145 Wn. App. 592 (Div. II, 2008) – October 08:23

DOUBLE JEOPARDY

"Double jeopardy" statute, RCW 10.43.040, as amended in 1999, does not apply to bar criminal prosecution in State courts where military has sanctioned the defendant only with non-judicial punishment for the same offense. State v. Stivason, 134 Wn. App. 648 (Div. II, 2006) – October 06:21

DUE PROCESS, INCLUDING BRADY RULE

Brady violation occurred where the State failed to disclose that, contrary to the trial testimony of two key witnesses, one of the witnesses was intensively coached and the other was a paid informant. Banks v. Dretke, 124 S.Ct. 1256 (2004) – April 04:07

Drivers' license suspensions (mostly DWLS 3 offenses) without opportunity for prior hearing held unconstitutional under constitutional due process analysis. City of Redmond v. Moore, 151 Wn.2d 664 (2004) – July 04:06; August 04:23; October 04:22.

Defendant's rights to due process and to silence violated -- prosecutor should not have asked detective to testify that defendant at time of arrest did not deny the charge. State v. Holmes, 122 Wn. App. 438 (Div. I, 2004) – November 04:20

In failure-to-use-fish-guard case, State wins on issues of: 1) "open view," 2) Miranda-custody, and 3) seizing-of-property-without-prior-hearing. State v. Creegan, 123 Wn. App. 718 (Div. III, 2004) – January 05:13

Drivers' license suspensions based on conviction of certain criminal offenses are held constitutional. City of Redmond v. Bagby, 155 Wn.2d 59 (2005), and City of Bremerton v. Hawkins, 155 Wn.2d 107 (2005) – October 05:07

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 (9th Cir. 2007) (decision filed July 3, 2007) – October 07:05

ELECTRONIC SURVEILLANCE (Chapter 9.73 RCW)

No violation of chapter 9.73 RCW (Privacy Act) in mom's use of speakerphone function at base of cordless phone to listen in on daughter's conversation – no "device designed to transmit" was used. State v. Christensen, 119 Wn. App. 74 (Div. I, 2003) – Jan 04:20. Note that the Washington Supreme Court reversed this decision; see below, this topic.

2-1 majority of Ninth Circuit panel holds: 1) arrest of citizen for recording police radio communications without consent while citizen was conversing with officer in a public place was an unlawful arrest because such communications are not "private" under RCW 9.73; 2) no "qualified immunity" because officer should have known the "well-established" law; 3) agency liability question must go to jury because agency arguably should have given officer specific training on RCW 9.73; and 4) "outrage" issue must go to jury because elements of that tort action are arguably met on plaintiff's allegations. Johnson v. City of Sequim, 388 F.3d 676 (9th Cir. 2004) (decision filed November 16, 2004) – December 04:14

Mother violated Privacy Act, chapter 9.73 RCW, when she used speakerphone function to intercept a phone conversation between her daughter and her daughter's boyfriend. State v. Christensen, 153 Wn.2d 186 (2004) – February 05:09

Questioning of DUI suspect on the street held to not be a "private conversation" under chapter 9.73 RCW, and therefore any violation of in-car recording statute is held not to preclude admission of audiotape into evidence; also, telling suspect he is being "recorded" without specifying "audio" recording, held sufficient warning under RCW 9.73.090 in-car recording provisions. Lewis v DOL, 125 Wn. App. 666 (Div. I, 2005) – April 05:09. Note that the Washington Supreme Court affirmed in part and reversed in part this Court of Appeals decision; see below, this topic.

Electronic intercept-and-record order under Privacy Act (RCW 9.73) was supported by a showing that other normal investigative procedures would be "unlikely to succeed." State v. Johnson, 125 Wn. App. 443 (Div. II, 2005) – April 05:18

One-party consent tape recording of victim's Oregon-to-Washington call admissible because call was made from Oregon, recording occurred in Oregon, and recording was instigated exclusively by an Oregon officer not acting in concert with Washington officers. State v. Fowler, 127 Wn. App. (Div. II, 2005) – August 05:17

Lewis rule applies to officers' activation of patrol car audio-video recording device – chapter 9.73 does not require suppression because street conversations are not "private." State v. Kelly, 127 Wn. App. 54 (Div. I, 2005) – August 05:23. Note that the Washington Supreme Court affirmed in part and reversed in part this Court of Appeals decision; see below, this topic.

Patrol car recording of traffic stops must comply with warning requirement of RCW 9.73.090(1)(c) even though the street "conversations" are not "private;" but only the recordings, not the officers' recollections of the events, are to be excluded. Lewis v. Department of Licensing, 157 Wn.2d 446 (2006) – September 06:09

Victim's recording in Oregon of phone conversation with suspect did not violate chapter 9.73 RCW where Oregon officer alone instigated the recording, and all

recording activity occurred exclusively in Oregon (though the suspect was in Washington). State v. Fowler, 157 Wn.2d 387 (2006) – September 06:10

King County Jail phones provided clear recorded notice that all inmate calls are recorded, and so did a posted written notice, and therefore jail's recording of inmate calls is held lawful on grounds of both 1) lack of reasonable privacy expectation, and 2) consent; recordings of the calls therefore is held admissible under chapter 9.73 RCW. State v. Modica, 136 Wn. App. 434 (Div. I, 2006) – February 07:13. Note that the Washington Supreme Court affirmed this Court of Appeals decision; see below, this topic.

Videotape of confession not admissible under RCW 9.73.090(1) because Miranda warnings, though given off-tape earlier, were not repeated on the tape; photo montage procedure also arguably flawed because, after the 2 victim-witnesses ID'd defendant, officers told them that they had picked same person, and an officer told one of them that the person picked was in custody – but murder conviction upheld anyway. State v. Courtney, 137 Wn. App. 376 (Div. III, 2007) – May 07:08

Reserve undercover officer's extraterritorial taping of conversation in drug dealer's home held OK against challenges based on (1) Washington constitutional privacy protection, (2) chapter 9.73 RCW, and (3) chapter 10.93 RCW. State v. Barron, 139 Wn. App. 266 (Div. I, 2007) – September 07:18

King County Jail phones provided a clear, recorded notice that all inmate calls are recorded, and so did a posted written notice, and therefore jail's recording of inmate calls was lawful because any expectation of privacy was not reasonable for purposes of chapter 9.73 RCW. State v. Modica, 164 Wn.2d 83 (2008) – September 08:05

EMPLOYMENT STANDARDS FOR HOURS AND WAGES

Security company installation and service technicians were "on duty" at a "prescribed work place" when driving company trucks from their homes to the first jobsite and back from the last jobsite, and thus were entitled to compensation for such drive time under the Minimum Wage Act (MWA). Stevens v. Brink's Home Security, Inc., 162 Wn.2d 42 (2007) – February 08:09

ESCAPE AND RELATED OFFENSES (Chapter 9A.76 RCW)

Felons who were serving their time in county jail (not prison) nonetheless were "inmates" for purposes of "escape from community custody" statute. State v. Rizor, 121 Wn. App. 898 (Div. III, 2004) – November 04:23

It was first degree "escape" for the defendant to run from the courtroom moments after the defendant heard the trial judge's post-verdict oral order to

"have (defendant) taken into custody." State v. Eichelberger, 144 Wn. App. 61 (Div. II, 2008) September 08:22

EVIDENCE LAW

Recantation by alleged victim as to her prior unsworn written statement to police held inadmissible under ER 801 – "Smith affidavit" requirements not met. State v. Nieto, 119 Wn. App. 157 (Div. I, 2003) – January 04:14

No search warrant was needed for a "second look" in the jail property room at personal effects that were taken at booking; Washington Supreme Court also looks at question of admissibility of expert testimony regarding assessing the reliability of eyewitness identification. State v. Cheatam, 150 Wn.2d 626 (2003) – February 04:05

Evidence of delivery of drugs was sufficient to convict seller who used middleman; also, co-conspirator statements held admissible under hearsay rules. State v. Rangel-Reyes, 119 Wn. App. 494 (Div. III, 2003) – February 04:09

Evidence Rule 408 does not bar admission of evidence that DV defendant independently paid for damages. State v. O'Connor, 119 Wn. App. 530 (Div. I, 2003) – February 04:19

Clergy-penitent privilege applies to youth pastor's "confession" to ordained church elder; "waiver" and "independent source" questions also addressed. State v. Glenn, 115 Wn. App. 540 (Div. II, 2003) – April 04:12

At criminal trial, witness is not allowed to express opinion that the defendant is guilty or that another person is not guilty. State v. Dolan, 118 Wn. App. 323 (Div. II, 2003) – April 04:20

Restrictions on admissibility of "testimonial" hearsay are tightened under the Sixth Amendment's confrontation clause. Crawford v. Washington, 124 S.Ct. 1354 (2004) – May 04:20

Trial court erred in admitting hearsay testimony of interrogating officer regarding what defendant said, as translated by fellow officer. State v. Gonzalez-Hernandez, 122 Wn. App. 53 (Div. II, 2004) – November 04:14

Officer's testimony that "Reid Investigative Technique" revealed that defendant had been deceptive during interrogation constituted inadmissible opinion on defendant's guilt. State v. Barr, 123 Wn. App. 373 (Div. III, 2004) – November 04:16

"Blue Book" evidence held admissible under "market reports" hearsay exception, ER 803 (17), to show value of stolen item in possessing stolen property prosecution. State v. Shaw, 120 Wn. App. 847 (Div. I, 2004) – November 04:21

Retailer's computer-generated tally of stolen goods admissible as "business records" per hearsay exception at RCW 5.45.020. State v. Quincy, 122 Wn. App. 395 (Div. I, 2004) – November 04:21

Confession suppressed under Evidence Rule 410 – nature and extent of prosecutor's participation in police interrogation gave defendant reasonable belief he was engaged in plea negotiation. State v. Nowinski, 124 Wn. App. 617 (Div. I, 2004) **–** February 05:17

For purposes of meeting hearsay exception for "excited utterance," the hearsay itself can be the evidence used to establish that the startling event occurred. State v. Young, 123 Wn. App. 854 (Div. I, 2004) – February 05:22; March 05:21.

Two rulings: 1) Miranda waiver and confession were "voluntary"; and 2) while trial judge should not have allowed detective to give opinion testimony that defendant had given "inconsistent" answers during interrogation, the judge's error was "harmless." State v. Saunders, 120 Wn. App. 800 (Div. II, 2004) – March 05:14

29-month-old child's statement to doctor held: (1) admissible under "medical diagnosis" hearsay exception, and (2) not "testimonial" under Crawford Sixth Amendment "confrontation clause" interpretation. State v. Fisher, 130 Wn. App. 1 (Div. II, 2005) – June 05:11

"Frye test" not met for physician assistant's expert testimony that child victim's statement alone showed that sexual abuse occurred. State v. Dunn, 125 Wn. App. 582 (Div. III, 2005) – June 05:16

Prosecutor should not have elicited testimony of detective and of doctor regarding their assessment of the credibility of alleged victim of child sex abuse. State v. Kirkman, 126 Wn. App. 97 (Div. II, 2005) – June 05:18

Police officers' testimony regarding jail booking records was properly admitted under statutory "business records" exception to hearsay rule. State v. Iverson, 126 Wn. App. 329 (Div. I, 2005) – June 05:19

Arrestee's "volunteered statement" and his reply to the arresting officer's "neutral" response held admissible despite lack of Miranda warnings; however, arrestee's statements to hospital personnel held medically privileged despite presence of officers when those statements were made. State v. Godsey, 131 Wn. App. 278 (Div. III, 2006) – March 06:08

911 report by victim of ongoing DV crime held to meet Crawford test for "nontestimonial" – and hence admissible – hearsay under Sixth Amendment confrontation clause. Davis v. Washington and Hammon v. Indiana, 126 S.Ct. 2266 (2006) – September 06:03

Domestic violence victim's Smith statement held admissible against hearsay and confrontation clause challenges. State v. Thach, 126 Wn. App. 297 (Div. II, 2005) – October 06:22

Taggers' prior acts of graffiti were signature crimes of malicious mischief (MO evidence) and therefore admissible in subsequent malicious mischief prosecutions for further graffiti crimes. State v. Foxhoven and State v. Sanderson, 161 Wn.2d 168 (2007) – October 07:09

Forfeiture-by-wrongdoing hearsay exception held limited by the U.S. constitution's Sixth Amendment confrontation clause to circumstance where defendant had motive to make declarant unavailable. Giles v. California, 128 S.Ct. 2678 (2008) – September 08:02

EXCLUSIONARY RULE (See subtopic under "Searches")

EXTRATERRITORIAL AUTHORITY (Chapter 10.93 RCW)

Reserve undercover officer's extraterritorial taping of conversation in drug dealer's home held OK against challenges based on (1) Washington constitutional privacy protection, (2) chapter 9.73 RCW, and (3) chapter 10.93 RCW. State v. Barron, 139 Wn. App. 266 (Div. I, 2007) – September 07:18

FIREARMS LAWS (Chapter 9.41 RCW) AND OTHER WEAPONS LAWS

Prosecution under federal firearms statute prohibiting gun possession by convicted domestic violence assailant, based on prior misdemeanor crime of domestic violence, does not require that a domestic relationship be an express element of the underlying crime. However, defendant's conviction under Wyoming battery statute did not satisfy "physical force" requirement of the federal statute; also, defendant did not validly waive his right to counsel per the statute. United States v. Belless, 338 F.3d 1063 (9th Cir. 2003) (decision filed August 11, 2003) – January 04:08

Concept of constructive possession of firearm does not include element of immediate accessibility of the firearm allegedly possessed. State v. Howell, 119 Wn. App. 644 (Div. I, 2003) – January 04:19

Unconstitutionality declared as to RCW 9.41.040(1)(b)(iv)'s prohibition of gun ownership (but not as to its prohibition on possession or of control) for those free on bond or PR pending trial, pending appeal or pending sentencing. State v. Spiers, 119 Wn. App. 85 (Div. II, 2003) – January 04:21

Knowledge by defendant that he is in possession of an unlawful firearm (here, a short-barreled shotgun) is an element of the crime under RCW 9.41.190; evidence

in this case was sufficient, however, to support the jury's verdict of knowledge as to some charges under RCW 9.41.190 and RCW 9.41.040. State v. Warfield, 119 Wn. App. 871 (Div. II. 2003) – February 04:17

Article: Federal legislation (H.R. 218) adopted to provide an exemption for qualified current and former law enforcement officers from state laws on carrying concealed handguns. – September 04:02

Backyard is not part of "place of abode" for purposes of unlawful-display-of-a-weapon charge under RCW 9.41.270(1). State v. Smith, 118 Wn. App. 480 (Div. I, 2003) – September 04:23

Mere lack of warning to convicted felon as to his ineligibility to possess firearm held to be no excuse for violating RCW 9.41.040. State v. Blum, 121 Wn. App. 1 (Div. III, 2004) – October 04:17

Firearms possession charge under RCW 9.41.040 based on juvenile convictions in 1995 held properly dismissed because 1995 juvenile court judge affirmatively misled defendant as to effect of conviction. State v. Moore, 121 Wn. App. 889 (Div. III. 2004) – October 04:18

Washington courts do not have inherent or statutory authority to issue "certificates of rehabilitation" to restore firearms rights. State v. Masangkay, 121 Wn. App. 904 (Div. I, 2004) – October 04:19

Reading the unlawful-possession-of-firearms law at RCW 9.41.040 together with the former juvenile sealed-records statute, Court of Appeals rules that RCW 13.50.050(14) requires that prior "serious offenses" adjudications be treated as if they never happened if a sealing-and-expunging order is obtained. Nelson v. State, 120 Wn. App. 470 (Div. I, 2003) – October 04:20

Good faith immunity provision in firearms statute precludes suit against sheriff's office for delay in approving pistol purchase. Deschamps v. Mason County Sheriff's Office, 123 Wn. App. 551 (Div. II, 2004) – November 04:19

Proof of knowledge that weapon (short-barreled shotgun) is illegal to possess is not necessary to support conviction for possession of unlawful firearm. State v. Williams, 125 Wn. App. 335 (Div. II, 2005) – March 05:22; Aug 05:24. Note that the Washington Supreme Court affirmed this Court of Appeals decision; see below, this topic.

"Washout" provisions of sentencing laws irrelevant to question of whether person has predicate "conviction" under "unlawful possession of a firearm" law; also, juvenile adjudication is "conviction" under RCW 9.41.040, and the Legislature's expanding of RCW 9.41.040 did not violate due process protections. State v. Sweeney, 125 Wn. App. 77 (Div. III, 2005) – March 05:22

Conviction in foreign country does not count as a conviction under federal felon-in-possession-of-firearm law. Small v. U.S., 125 S.Ct 1752 (2005) – August 05:04

In felon-with-a-firearm case, it was no excuse for defendant that original court that sentenced for the predicate felony failed to inform the felon that he was not allowed to possess firearms. State v. Minor, 133 Wn. App. 636 (Div. II, 2006) – September 06:19. Note that the Washington Supreme Court reversed this decision; see below, this topic.

State's "constructive possession" theory regarding gun in upstairs bedroom is rejected on grounds that the juvenile defendant previously had moved out of the bedroom where the gun was found. State v. G.M.V., 135 Wn. App. 366 (Div. III, 2006) – December 06:21

Association contracting to use city convention center for gun show loses challenge to restrictions placed on show. Pacific Northwest Shooting Park v. City of Sequim, 158 Wn.2d 342 (2006) – January 07:07

Defendant's knowledge of characteristics of firearm that make it unlawful must be proven under RCW 9.41.190 (short-barreled rifles and shotguns), but knowledge of wrongfulness of conduct is not an element of the crime. State v. Williams, 158 Wn.2d 904 (2006) – February 07:11

Juvenile court's failure at time of earlier adjudication to notify defendant of bar to firearms possession precludes his subsequent conviction for gun possession under RCW 9.41.040. State v. Minor, 162 Wn.2d 796 (2007) – April 08:15

Second amendment of U.S. Constitution applied to strike down broad District of Columbia ban on handgun possession. District of Columbia v. Heller, 128 S.Ct. 2783 (2008) – August 08:03

Version of RCW 9.41.040 that was in effect when the person petitioned for restoration of firearms rights, not the earlier version of the statute that was in effect when the crime was committed and sentence was imposed, governs on the restoration of firearms rights. State v. Rivard, __ Wn. App. __ , 193 P.3d 195 (Div. III, 2008) – November 08:23, revising Division Three's earlier decision in this case reported in the September 2008 LED.

FIREWORKS AND EXPLOSIVES LAW (Chapter 70.74 RCW)

Maker of incendiary device ("Molotov cocktail") can be convicted without proof that he designed the device for use in "willful destruction." State v. Flinn, 119 Wn. App. 232 (Div. I, 2003) – January 04:17

FISH AND WILDLIFE CRIMES, VIOLATIONS, ENFORCEMENT (Title 77 RCW)

Orchardist's conviction for unlawfully hunting big game in shooting of marauding/foraging elk upheld, necessity defense fails. State v. Vander Houwen, 128 Wn. App. 806 (Div. III, 2005) – February 06:24. Note that this decision was reversed by the Washington Supreme Court; see below, this topic.

Burden-shifting jury instructions were required in order to protect orchardist's constitutional right to protect his trees from marauding/foraging elk. State v. Vander Houwen, 163 Wn.2d 25 (2008) – May 08:16

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

FORFEITURE LAW (See also "Uniform Controlled Substances Act")

Forfeiture of $118,134 in suspected drug cash found in crashed plane upheld against sufficiency-of-the-evidence challenge in light of packaging of cash, pilot's failure to declare this large amount of money before leaving on Canada-bound flight, presence of drug ledger, presence of small amount of marijuana, retrofitting of plane for cargo, and low altitude flying; also, claimant's due process challenge to forfeiture proceedings based on delay of hearing is rejected. Sam v. Okanogan County Sheriff's Office, 136 Wn. App. 220 (Div. III, 2006) – February 07:20

Parents of adult son lose vehicle drug-forfeiture case where they raised innocent owner defense as to two family cars. In re the Forfeiture of One 1970 Chevrolet Chevelle, 140 Wn. App. 802 (Div. I, 2007) – November 07:12

FREEDOM OF RELIGION (FIRST AMENDMENT)

Father's defenses of corpus delicti, consent and religious freedom rejected in assault-of-child prosecution that arose from his attempt at do-it-himself, amateur circumcision of his 8-year-old son. State v. Baxter, 134 Wn. App. 587 (Div. II, 2006) – October 06:17

FREEDOM OF SPEECH (FIRST AMENDMENT)

State is not required to prove defendant's intent to carry out threat in order to convict for felony harassment. However, the evidence in the Kilborn case does not meet the First Amendment free speech clause's "true threat" standard. Therefore, the evidence is insufficient to support a conviction under the facts of the Kilborn case. State v. Kilborn, 151 Wn.2d 36 (2004) – October 04:05

Seattle ordinance barring the posting of notices on city-owned property, including utility poles, upheld against freedom-of-speech attack. City of Seattle v. Mighty Movers, 152 Wn.2d 343 (2004) – November 04:07

San Diego police officer who marketed sex video featuring himself as a stripping and masturbating officer is not entitled to First Amendment free speech protection against firing. City of San Diego v. Roe, 125 S.Ct. 521 (2004) – February 05:09

Bomb threat conviction under RCW 9.61.160 reversed – man who was drunk when, during his detention by airport police, he threatened to "blow this place up," is entitled to a new trial with jury instructions reflecting "true threat" standard created to protect free speech under the First Amendment. State v. Johnston, 156 Wn.2d 355 (2006) – March 06:04

Deputy prosecutor's line-of-duty questioning of deputy sheriff's veracity held not protected under First Amendment's freedom of speech clause. Garcetti v. Ceballos, 126 S.Ct. 1951 (2006) – August 06:05

Evidence held sufficient to support conviction for intimidating officer-witness – threat held to be "true threat" not protected as free speech under the First Amendment of the U.S. Constitution. State v. King, 135 Wn. App. 662 (Div. III, 2006) – January 07:12

Court rejects a variety of theories argued by an officer who challenged being fired for maintaining a sexually explicit website. Dible v. City of Chandler (Arizona), 515 F.3d 918 (9th Cir. 2008) (decision filed September 5, 2007; amended February 1, 2008) – April 08:12

Defendant's statements to a mental health provider that he wanted to kill his neighbors pass "true threat" standard for First Amendment free speech protection, and the statements constituted harassment. State v. Schaler, 145 Wn. App. 628 (Div. III, 2008) – September 08:21

Satirical message – "I am a . . . suicide bomber terrorist" painted on his van by mild-mannered, anti-government "nut" was protected as "free speech" under the First Amendment. Fogel v. Collins, 531 F.3d 824 (9th Cir. 2008) (decision filed June 27, 2008) – October 08:09

"Criminal libel" statute ruled unconstitutional based on free speech protections of First Amendment. Parmelee v. O'Neel, 145 Wn. App. 223 (Div. II, 2008) – October 08:24

GENERAL [COURT] RULE 31

Note: General Rule 31 for Washington courts protects privacy by limiting information provided in court filings. – January 05:23

HARASSMENT (Chapter 9A.46 RCW) (See also "Telephone Harassment")

Where felony charge of harassment is based on a threat to kill, the State must prove that the victim had a reasonable fear of death based on the threat. State v. C.G., 150 Wn.2d 604 (2003) – February 04:09

Under unique circumstances, search warrant upheld even though it did not identify a specific crime under investigation; also, evidence held sufficient to convict of second degree theft, criminal harassment, stalking, and criminal libel. State v. Askham, 120 Wn. App. 872 (Div. III, 2004) – June 04:18

State not required to prove defendant's intent to carry out threat in order to convict for felony harassment; however, evidence in Kilborn case does not meet free speech clause's "true threat" standard and is, therefore, insufficient to convict under facts of present case. State v. Kilborn, 151 Wn.2d 36 (2004) – October 04:05

Evidence held sufficient to support convictions for harassment and for communication with a minor for immoral purposes; search warrant withstands challenges based on tests for probable cause, particularity and staleness. State v. Hosier, 124 Wn. App. 696 (Div. I, 2004) **–** May 05:15. Note that the Washington Supreme Court affirmed this Court of Appeals decision; see below, this topic.

Evidence held sufficient to support convictions for communication with a minor for immoral purposes – 1) dad telling victim-daughter about defendant's message, and 2) discovery by non-reading children of another message were each prohibited "communication" circumstances. State v. Hosier, 157 Wn.2d 1 (2006) – August 06:06

To establish telephone harassment, State must prove intent to harass the victim was formed when the defendant initiated the call. State v. Lilyblad, 163 Wn.2d 1 (2008) – April 08:14

Defendant's statements to a mental health provider that he wanted to kill his neighbors pass "true threat" standard for First Amendment free speech protection, and the statements constituted harassment. State v. Schaler, 145 Wn. App. 628 (Div. III, 2008) – September 08:21

IDENTIFICATION PROCEDURES (See "Lineups, Photo Identifications and Showups")

IDENTITY THEFT (RCW 9.35.020)

Identity theft: case 1 – charge must be linked to specific real person; case 2 – actual use of victim's means of identification is not a required element of proof. State v. Berry, 129 Wn. App. 59 (Div. I, 2005) – February 06:13

Woman committed identity theft when she fooled officer at traffic stop by giving acquaintance's name, DOB, address and SSN, and she thus caused major

subsequent problems for her unfortunate acquaintance. State v. Presba, 131 Wn. App. 47 (Div. I, 2005) – March 06:17

IMPLIED CONSENT, BREATH AND BLOOD TESTS FOR ALCOHOL, DRUGS (RCW 46.20.308) (See also "Traffic")

Breath test instruments that were certified under a former protocol did not meet testing standards of WAC 448-13-035. Seattle v. Clark-Munoz, 152 Wn.2d 39 (2004) – August 04:22

Evidence of driver's refusal to take breath test is admissible as evidence of guilty knowledge even where breath test, if taken, would not have been admissible. State v. Cohen, 125 Wn. App. 220 (Div. I, 2005) – March 05:21

Involuntary blood draw upheld in response to defendant's non-constitutional challenge under RCW 46.20.308, because, at the time of arrest, the officer had probable cause to believe that the suspect had committed vehicular assault or vehicular homicide. State v. Mee Hui Kim, 134 Wn. App. 27 (2006) – November 06:14

INDIANS (NATIVE AMERICANS) AND LAW ENFORCEMENT

The state lacks criminal jurisdiction over tribal member if the alleged non-traffic criminal violation is unrelated to an exception to RCW 37.12.010(1)-(8). State v. Pink, 144 Wn. App. 945 (Div. II, 2008) – October 08:19

INITIATIVE-SIGNATURE-GATHERING RIGHTS

Article: Revisiting the rules regarding citizens' collecting of signatures for initiatives and referendum petitions on public and private property. – June 04:24

INTERROGATIONS AND CONFESSIONS (See also "Criminal Rule 3.1" and "Sixth Amendment Right to Counsel")

State may not introduce evidence in its case in chief showing that defendant selectively exercised his right to silence during police interrogation. State v. Silva, 119 Wn. App. 422 (Div. III, 2003) – February 04:20

6th Amendment required that police give Miranda warnings prior to questioning indicted defendant in his kitchen even though he was not in custody; case is remanded to 8th Circuit of U.S. Court of Appeals to determine if 5th Amendment's qualified, cat-out-of-the-bag limit on exclusion of evidence applies to this 6th Amendment violation. Fellers v. U.S., 124 S.Ct. 1019 (2004) – March 04:05

Spanish Miranda warning by Oregon officer failed to adequately advise of right to an attorney. State v. Perez-Lopez, 348 F.3d 839 (9th Cir. 2003) (decision filed November 7, 2003) – July 04:05

In questionable ruling, Court of Appeals holds that interrogation during an investigative stop was "custodial" for Miranda purposes. State v. France, 121 Wn. App. 394 (2004) – July 04:10. Note that the Court of Appeals later entered a slightly revised opinion, but with the same questionable legal conclusions; see below, this topic.

In habeas review, Miranda "custody" questions relating to the relevance of youth and inexperience of suspects discussed but not fully resolved by the U.S. Supreme Court. Yarborough v. Alvarado, 124 S.Ct. 2140 (2004) – August, 04:04

Bad faith, premeditated, two-step-interrogation approach - - (1) questioning first and (2) then Mirandizing and questioning immediately afterward - - violates Miranda and cannot lead to a valid waiver of Miranda rights. The violation in this case requires exclusion from evidence of all statements of the suspect. Missouri v. Seibert, 124 S.Ct. 2601 (2004) – September 04:04

Physical evidence that was the fruit of a custodial interrogation held admissible even though the defendant was not properly Mirandized prior to the interrogation. United States v. Patane, 124 S.Ct. 2620 (2004) – September 04:08

Questioning of suspect on the porch of her trailer home was not "custodial" for Miranda purposes; also, suspect's "focus"/PC argument is rejected (Washington Supreme Court explains that it has overruled its Dictado "focus" analysis). State v. Lorenz, 152 Wn.2d 22 (2004) – September 04:10

Noncommissioned city park security officers were "state agents" for purposes of Miranda; but Terry stop was not "custodial" equivalent of arrest, so no Miranda warnings were required. State v. Heritage, 152 Wn.2d 210 (2004) – September 04:12

Where suspect voluntarily accompanied FBI agent to FBI office, and FBI agent then told suspect that he was free to leave at any time, suspect was not in "custody" for Miranda purposes. U.S. v. Crawford, 372 F.3d 1048 (9th Cir. 2004) (decision filed June 21, 2004) – October 04:03

Defendant's rights to due process and to silence violated - - prosecutor should not have asked detective to testify that defendant at time of arrest did not deny the charge. State v. Holmes, 122 Wn. App. 438 (Div. I, 2004) – November 04:20

In failure-to-use-fish-guard case, State wins on issues of: 1) "open view," 2) Miranda-custody, and 3) seizing-of-property-without-prior-hearing. State v. Creegan, 123 Wn. App. 718 (Div. III, 2004) – January 05:13

Confession suppressed under Evidence Rule 410 – nature and extent of prosecutor's participation in police interrogation gave defendant reasonable belief he was engaged in plea negotiation. State v. Nowinski, 124 Wn. App. 617 (Div. I, 2004) **–** February 05:17

Stationhouse questioning of 17-year-old held "custodial" for Miranda purposes, but court's opinion fails to provide a description of all of the facts relevant to determining Miranda "custody". State v. Daniels, 124 Wn. App. 830 (Div. II, 2004) **–** March 05:12. Note that the Washington Supreme Court affirmed this decision; see below, this topic.

Two rulings: 1) Miranda waiver and confession were "voluntary"; and 2) while trial judge should not have allowed detective to give opinion testimony that defendant had given "inconsistent" answers during interrogation, the judge's error was "harmless." State v. Saunders, 120 Wn. App. 800 (Div. II, 2004) - March 05:14

Miranda waiver by continuous-custody defendant did not go stale in fourteen hours; re-Mirandizing was not required. U.S. v. Rodriguez-Preciado, 399 F.3d 1118 (9th Cir. 2005) (decision filed March 4, 2005) – May 05:07

Confession held "voluntary" despite arguably improper police-interrogator assertion to suspect that "whoever talks first will get the best deal"; also "accomplice" status established by evidence of presence-plus. State v. Trout, 125 Wn. App. 403 (Div. III, 2005) – May 05:09

Sixth Amendment's initiation-of-contact restriction is not triggered by a tribal court arraignment. U.S. v. Charley, 396 F.3d 1074 (9th Cir. 2005) (decision filed February 3, 2005) – August 05:06

Miranda warnings were ok without a fifth warning regarding the "right to stop answering questions at any time." In re Dwayne Anthony Woods, 154 Wn.2d 400 (2005) – August 05:10

Game agent's approach to home via back driveway was lawful, and he had "open view" of elk carcass in poaching suspect's open garage; unlawfulness of agent's subsequent warrantless entry to seize carcass is irrelevant under the facts of this case; and Miranda warnings were not required for non-custodial questioning. State v. Posenjak, 127 Wn. App. 41 (Div. III, 2005) – August 05:14

Officer's introductory remarks prior to Mirandizing custodial suspect did not destroy the effectiveness of the warnings. Juan H. v. Allen, 408 F.3d 1262 (9th Cir. 2005) (decision filed June 2, 2005) – September 05:15

Division One of the Court of Appeals holds that an ambiguous Miranda "invocation" does not require police to interrupt their interrogation to ask clarifying questions. State v. Walker, State v. Garrison, 129 Wn. App. 258 (Div. I, 2005) – November 05:19. Note that the Washington Supreme Court denied review in this case.

On reconsideration, court again holds that officer's questioning of suspect during a DV investigative stop – where officer told suspect he would be detained until officer could "clear it up" – was custodial. State v. France, 129 Wn. App. 907 (Div. II, 2005) – December 05:17

Terry seizure of reckless driving suspect held justified by reasonable suspicion; also, Miranda warnings held not required in Terry stop questioning. State v. N.M.K., 129 Wn. App. 155 (Div. I, 2005) – January 06:14

Arrestee's "volunteered statement" and his reply to the arresting officer's "neutral" response held admissible despite lack of Miranda warnings; however, arrestee's statements to hospital personnel held medically privileged despite presence of officers when those statements were made. State v. Godsey, 131 Wn. App. 278 (Div. III, 2006) – March 06:08

Deliberate two-step interrogation – un-Mirandized custodial questioning followed by Mirandized questioning – held to violate Miranda per Missouri v. Seibert. U.S. v. Williams, 435 F.3d 1148 (9th Cir. 2006) (decision filed January 30, 2006) – April 06:02

DUI arrestee changed his mind about contacting counsel and therefore CrRLJ 3.1 was not violated by law enforcement officer. State v. Kronich, 131 Wn. App. 537 (Div. III, 2006) April 06:03

Pre-sentence interview of convicted murderer by DOC employee held not subject to Fifth Amendment Miranda warnings requirement or subject to Sixth Amendment counsel protection. State v. Everybodytalksabout, 131 Wn. App. 227 (Div. I, 2006) – April 06:22. Note that the Washington Supreme Court reversed this Court of Appeals decision; see below, this topic.

Partially handcuffed murder suspect's waiver of Fifth and Sixth Amendment rights prior to custodial questioning by FBI agents valid - - and Criminal Rule 3.1 not violated - - because, although suspect asked agents about the process for appointing counsel, he made clear that he was willing to be questioned without a lawyer; also, jailhouse informant could testify about a jailhouse conversation with the defendant because police did not make him their "agent" for Sixth Amendment purposes. State v. Whitaker, 135 Wn. App. 923 (Div. I, 2006) – August 06:18

Wording of military Miranda warnings held sufficient for waiving of rights for purposes of state court prosecution. State v. Hopkins, 134 Wn. App. 780 (Div. II, 2006) – October 06:23

In appeal from aggravated first degree murder conviction and death sentence, the sentence is reversed, but conviction is affirmed, and: 1) evidence held sufficient; 2) police initiation of contact with charged rape defendant to question him on unrelated murder case held OK under federal Sixth Amendment right-to-counsel protection; and 3) government's investigative use in the murder case of DNA evidence previously obtained in rape case held OK. State v. Gregory, 158 Wn.2d 759 (2006) – February 07:05

Objective standard for triggering Miranda warnings – a loss of freedom equal to that associated with a formal arrest – not met, and thus warnings were not required regardless of whether there existed probable cause to arrest. State v. Ustimenko, 137 Wn. App. 109 (Div. III, 2007) – May 07:12

Officer telling custodial interrogation suspect that the officer would not charge the suspect for writing graffiti in a stolen car did not make involuntary the suspect's confession to 1) taking vehicle without permission and 2) vehicle prowling. State v. L.U., 137 Wn. App. 410 (Div. I, 2007) – May 07:17

Evidence that defendant assaulted child and then ordered her into living room held sufficient to support unlawful imprisonment conviction; phone call by officer to suspect held not custodial questioning, and hence Miranda held not applicable. State v. Davis, 133 Wn. App. 415 (Div. III, 2007) – June 07:14

Fake-attorney ruse by police to get murder suspect to lick and send envelope did not violate constitutional privacy protections; nor did it violate RCW 9.73.020; nor was the ruse so outrageous as to require dismissal of case under CrR 8.3(b); also, defendant gave valid waiver of his Miranda rights prior to questioning despite his refusal to sign a waiver form. State v. Athan, 160 Wn.2d 354 (2007) – August 07:02

Arrestee's equivocal mid-interrogation mention of attorney did not require clarification by detectives of Miranda waiver – U.S. Supreme Court's Davis decision held to control. State v. Radcliffe, 139 Wn. App. 214 (Div. II, 2007) – August 07:10. Note that the Washington Supreme Court affirmed this decision; see below, this topic.

Babykiller loses challenges to admission of both his pre-Miranda and his post-Miranda statements to police. State v. Adams, 138 Wn. App. 36 (Div. III, 2007) – August 07:12

Seventeen-year-old questioned about her infant son's death in interrogation room for over 90 minutes with father excluded from room was in "custody" for Miranda purposes. State v. Daniels, 160 Wn.2d 256 (2007) – September 07:14

Sixth Amendment right to counsel held violated by CCO's post-conviction, pre-sentencing interview. State v. Everybodytalksabout, 161 Wn.2d 702 (2007) – October 07:09

No Miranda custody in phone conversation between jailed suspect and police where suspect initiated the phone call. Saleh v. Fleming, 512 F.3d 548 (9th Cir. 2008) (decision filed January 3, 2008) – April 08:03

Officer should have clarified suspect's ambiguous response of "I'm good for tonight" that immediately followed officer's question whether the just-Mirandized

suspect wished to talk to officer. U.S. v. Rodriguez, 518 F.3d 1072 (9th Cir. 2008) (decision filed March 10, 2008) – April 08:08

After two attempts during custodial interrogation to assert his right to silence, suspect told interrogating officer: "I plead the Fifth" - - Ninth Circuit holds that, at that point, the questioning should have stopped and that the officer's response of "Plead the Fifth! What's that?" was not a clarifying question. Anderson v. Terhune, 516 F.3d 781 (9th Cir. 2008) (decision filed February 15, 2008) – April 08:09

In internal affairs investigation following use-of-force incident, officers' Fourth Amendment and Fifth Amendment rights were not violated. Aguilera v. Baca, 510 F.3d 1161 (9th Cir. 2007) (decision filed December 27, 2007) – April 08:13

"Death notification" to in-custody murder suspect shortly after she invoked her right to counsel was impermissible "interrogation." State v. Wilson, 144 Wn. App. 166 (Div. III, 2008) – September 08:18

In-home questioning, with child porn suspect surrounded by officers in a storage room, held "custodial" under totality of circumstances per Miranda rule despite facts that the interrogating officer told suspect that suspect 1) would not be arrested that day, 2) did not have to answer questions, and 3) was free to leave. U.S. v. Craighead, 539 F.3d 1073 (9th Cir. 2008) (decision filed August 21, 2008) – October 08:04

Division One again rejects argument that constitutional due process protections require electronic recording of all interrogations. State v. Turner, 145 Wn. App. 899 (Div. I, 2008) – October 08:22

Arrestee's ambiguous mid-interrogation mention of the possibility of his need to confer with an attorney did not require that detectives clarify his earlier Miranda waiver - - U.S. Supreme Court's 1994 Davis decision is held to control. State v. Radcliffe, __ Wn.2d __, 194 P.3d 250 (2008) – December 08:18

INTIMIDATING A JUDGE (RCW 9A.72.160)

Evidence held insufficient to support conviction for intimidating a judge – defendant made no threat of future actions. State v. Brown, 137 Wn. App. 587 (Div. II, 2007) – June 07:20

INTIMIDATING A PUBLIC SERVANT (RCW 9A.76.180)

Intimidation-of-public-servant evidence held insufficient in case involving an officer breaking up an underage drinking party. State v. Burke, 132 Wn. App. 415 (Div. II, 2006) – May 06:20

INTIMIDATING A WITNESS (RCW 9A.72.110)

Evidence held sufficient to support conviction for intimidating officer-witness – threat held to be "true threat" not protected as free speech under the First Amendment of the U.S. Constitution. State v. King, 135 Wn. App. 662 (Div. III, 2006) – January 07:12

JAIL OPERATION

Attorney General opinion addresses responsibility of county jails to accept for booking persons arrested by WSP and other state law enforcement officers (AGO 2004 No. 4) - April 05:23

JUVENILE LAW (Primarily Title 13 RCW)

Declination of juvenile court jurisdiction in premeditated murder case was not an abuse of discretion. State v. H.O., 119 Wn. App. 549 (Div. I, 2003) – March 04:17

Infancy defense – substantial evidence held to support superior court's ruling that 11-year-old sex offender lacked criminal capacity. State v. Ramer, 151 Wn.2d 106 (2004) – June 04:14

Age element in Juvenile Act's automatic-decline provisions RCW 13.04.030(1)(e)(v) refer to age at the time of the decline proceedings. State v. Salavea, 151 Wn.2d 133 (2004) – November 04:07

Juvenile's age at time of MIP offense controls on drivers' license revocation under RCW 66.44.365(1). State v. R.J., 121 Wn. App. 215 (Div. I, 2004) – November 04:21

All juvenile participants in joyriding crime are jointly and severally liable under Juvenile Act for all restitution. State v. Hiett, 154 Wn.2d 560 (2005) – November 05:09

Court rejects 1) claim of constitutional right to jury trial in juvenile court, and 2) constitutional challenge to Legislature's use of common law definition of assault. State v. Chavez, 163 Wn.2d 262 (2008) – October 08:16

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

Evidence held sufficient to support kidnapping convictions as to two children despite defendant's status as a custodial parent of one child and arguable status as a guardian of the other child. State v. Lopez, 142 Wn. App. 341 (Div. I, 2007) – April 08:21

LANDLORD-TENANT LAW

When landlord invokes writ of restitution process to evict tenant from residence, landlord must arrange for storage of tenant's personal property unless tenant objects to storage. Parker v. Taylor, 136 Wn. App. 524 (Div. III, 2007) – March 07:23. Note that the Legislature has since amended some of the pertinent statutory provisions.

LAW ENFORCEMENT DIGEST CONTENTS

Article: In an article titled "Information regarding the Law Enforcement Digest" an explanation is provided regarding what types of appellate court decisions and new legislation are covered in the LED. The article also addressed LED priorities for the timing of appearance of entries in the LED. May 04:03.

LEGISLATIVE UPDATES

2004 WASHINGTON LEGISLATIVE UPDATE – PART ONE – May 04:05

2004 WASHINGTON LEGISLATIVE UPDATE – PART TWO (WITH INDEX – June 04:02

2005 WASHINGTON LEGISLATIVE UPDATE – PART ONE – June 04:01

2005 WASHINGTON LEGISLATIVE UPDATE – PART TWO (WITH INDEX) – July 05:19

2005 WASHINGTON LEGISLATIVE UPDATE REVISITED – August 05:03

Statute update: Initiative Measure 901, prohibiting smoking in public places and places of employment, takes effect December 8, 2005. – January 06:02

2006 WASHINGTON LEGISLATIVE UPDATE – PART ONE – May 06:01

2006 WASHINGTON LEGISLATIVE UPDATE – PART TWO (WITH INDEX) – June 06:02

2007 WASHINGTON LEGISLATIVE UPDATE – **PART ONE** – March 07:02

2007 WASHINGTON LEGISLATIVE UPDATE – **PART TWO** – June 07:02

2007 WASHINGTON LEGISLATIVE UPDATE – **PART THREE (WITH INDEX)** – July 07:01

2008 WASHINGTON LEGISLATIVE UPDATE – PART ONE – May 08:02

2008 LEGISLATIVE UPDATE - PART TWO (WITH INDEX) – June 08:02

2008 LEGISLATIVE UPDATE - - CORRECTION NOTICE RE EFFECTIVE DATE OF CHAPTER 230, LAWS OF 2008 – July 08:02

LIBEL (CRIMINAL) (RCW 9.58.010)

Under unique circumstances, search warrant upheld even though it did not identify a specific crime under investigation; also, evidence held sufficient to convict of second degree theft, criminal harassment, stalking, and criminal libel. State v. Askham, 120 Wn. App. 872 (Div. III, 2004) – June 04:18

"Criminal libel" statute ruled unconstitutional based on free speech protections of First Amendment. Parmelee v. O'Neel, 145 Wn. App. 223 (Div. II, 2008) – October 08:24

LINEUPS, PHOTO IDENTIFICATIONS AND SHOWUPS

Lineup was not impermissibly suggestive even though defendant was distinguishable from others by his black eye and by the orange color of his jail uniform. State v. Ratliff, 121 Wn. App. 642 (Div. II, 2004) – March 05:17

Showup identification procedure held not unduly suggestive; also, evidence held sufficient to support conviction for second degree robbery. State v. Brown, 128 Wn. App. 1 (Div. III, 2005) – February 06:16

Videotape of confession not admissible under RCW 9.73.090(1) because Miranda warnings, though given off-tape earlier, were not repeated on the tape; photo montage procedure also arguably flawed because, after the 2 victim-witnesses ID'd defendant, officers told them that they had picked same person, and an officer told one of them that the person picked was in custody – but murder conviction upheld anyway. State v. Courtney, 137 Wn. App. 376 (Div. III, 2007) – May 07:08

LOSS OF, DESTRUCTION OF, OR FAILURE TO PRESERVE EVIDENCE (see also "Due Process, Including Brady Rule")

Due process requirements not violated in good faith police destruction of cocaine after police had kept cocaine for over ten years while the charged defendant was on the lam. Illinois v. Fisher, 124 S.Ct. 1200 (2004) – April 04:05

Prosecutorial misconduct of withholding exculpatory evidence from defense held 1) to be so egregious as to require dismissal of charges and 2) to bar re-trial. State v. Martinez, 121 Wn. App. 21 (Div. III, 2004) – March 05:19

LURING (RCW 9A.40.090)

It was not "luring" where (1) adult stranger gestured to an 11-year-old girl to come over to his car, and (2) after the girl kept walking and did not approach the

stranger's car, he then continued a short distance in his car in the same direction as the girl was walking. State v. McReynolds, 142 Wn. App. 941 (Div. III, 2008) – May 08:20

MALICIOUS MISCHIEF (RCW 9A.48.070–100)

Arrestee's intentional spitting on floor and on shield partition of patrol car held not to be malicious mischief in the second degree because spitting is deemed not to be an act of physically damaging or tampering with the vehicle. State v. Hernandez, 120 Wn. App. 389 (Div. III, 2004) – April 04:09; July 04:15

Vandalizing a police vehicle was not "use" of the vehicle in a felony, and therefore the driver's license of the vandal may not be revoked under RCW 46.20.285(4). State v. B.E.K., 141 Wn. App. 742 (Div. II, 2007) – April 08:24

MINOR IN POSSESSION (RCW 66.44.270; RCW 66.44.365)

Juvenile's age at time of minor in possession offense controls on drivers' license revocation under RCW 66.44.365(1). State v. R.J., 121 Wn. App. 215 (Div. I, 2004) – November 04:21

Minor in possession conviction reversed on grounds that the minor's constructive possession of alcohol was not proven. State v. Roth, 131 Wn. App. 556 (Div. III, 2006) – April 06:05

Minor in possession evidence held insufficient to support conviction. State v. A.J.P-R., 132 Wn. App. 181 (Div. III, 2006) – August 06:16

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

Washington Supreme Court rejects Legislature's attempt to make retroactive its reversal of Court's 2002 interpretation in Andress of second degree felony murder statute. In Re Hinton, 153 Wn.2d 853 (2004) – August 05:09

In appeal from aggravated first degree murder conviction and death sentence, the sentence is reversed, but conviction is affirmed, and: 1) evidence held sufficient; 2) police initiation of contact with charged rape defendant to question him on unrelated murder case held OK under federal Sixth Amendment right-to-counsel protection; and 3) government's investigative use in the murder case of DNA evidence previously obtained in rape case held OK. State v. Gregory, 158 Wn.2d 759 (2006) – February 07:05

In defendant's appeal from aggravated first degree murder conviction, evidence held sufficient to support jury verdict as to premeditation element and robbery aggravator. State v. Allen, 159 Wn.2d 1 (2006) – April 07:04

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. State v. Elmi, 138 Wn. App. 306 (Div. I, 2007) – October 07:24

There is no such crime as "attempted felony murder" under Title 9A RCW. In re Personal Restraint of Richey, 162 Wn.2d 865 (2008) – May 08:17

Evidence of premeditation sufficient to support attempted murder convictions related to shoot-out with law enforcement officers where evidence showed (1) motive to avoid arrest, (2) procurement of gun, (3) shooting to kill, and (4) stealth during shootout. State v. Barajas, 143 Wn. App. 24 (Div. III, 2007) – October 08:18

Evidence in first degree premeditated murder case supports conviction, including premeditation element. State v. Sherrill, 145 Wn. App. 473 (Div. III, 2008) – October 08:23

Premeditation evidence was sufficient where it showed that the attempted-murder defendant 1) brought a loaded gun on a night out with his friends, 2) provoked a confrontation with a stranger, and 3) fired multiple shots at the stranger, with pauses in between shots. State v. Ra, 142 Wn. App. 868 (2008) – November 08:18

MUTUAL AID PEACE OFFICER POWERS ACT (Chapter 10.93 RCW)

Reserve undercover officer's extraterritorial taping of conversation in drug dealer's home held OK against challenges based on (1) Washington constitutional privacy protection, (2) chapter 9.73 RCW, and (3) chapter 10.93 RCW. State v. Barron, 139 Wn. App. 266 (Div. I, 2007) – September 07:18

NECESSITY DEFENSE (See also "Uniform Controlled Substances Act, Other Drug Laws" for cases on medical use of marijuana)

Under four-part test for common law "necessity" defense, facts of case are held not to justify the defense to an unlawful-possession-of-firearm charge. State v. Parker, 127 Wn. App. 352 (Div. III, 2005) – February 06:21

Orchardist's conviction for unlawfully hunting big game in shooting of marauding/foraging elk upheld, common law necessity defense fails. State v. Vander Houwen, 128 Wn. App. 806 (Div. III, 2005) – February 06:24. Note that the Washington Supreme Court reversed this decision; see below, this topic.

Burden-shifting jury instructions were required in order to protect orchardist's constitutional right to protect his trees from marauding/foraging elk. State v. Vander Houwen, 163 Wn.2d 25 (2008) – May 08:16

OBSTRUCTING (RCW 9A.76.020) AND RELATED OFFENSES

Under the 4th and 5th Amendments of the U.S. Constitution, a domestic violence suspect who refused to identify himself while lawfully being held in a Terry stop could be convicted under the clear wording of a narrow Nevada "stop-and-identify" statute (beware -- Washington state has no such statute). Hiibel v. Sixth Judicial Dist of Nevada, Humboldt County, 124 S.Ct. 2451 (2004) – August 04:02

False arrest civil suit must go to trial on question of whether officer had probable cause to arrest for obstructing. Bishop v. City of Spokane, 142 Wn. App. 165 (Div. III, 2007) – February 08:22

POLYGRAPH EVIDENCE

In custodial interference prosecution against mother of a child, evidence that father passed polygraph should not have been admitted. State v. Justesen, 121 Wn. App. 83 (Div. I, 2004) – April 04:18

PORNOGRAPHY/OBSCENITY (See "CHILD PORNOGRAPHY")

POSSESSING STOLEN PROPERTY (Chapter 9A.56 RCW) (See also "Theft")

For a check with a forged endorsement, the face amount is the "value" of the stolen check for purposes of the possessing stolen property statute even though a replacement check has been issued. State v. Lampley, 136 Wn. App. 836 (Div. II, 2007) – April 07:16

A credit card may be an "access device" regardless of whether the intended user has activated the card, so long as the evidence supports a finding that the card could be used in the manner described by RCW 9A.56.010(1). State v. Clay, 144 Wn. App. 894 (Div. I, 2008) – August 08:23

PRISONER RIGHT TO STARVE SELF

Prisoner held not to have constitutional right to starve himself. McNabb v. DOC, 163 Wn.2d 393 (2008) – October 08:16

PUBLIC RECORDS ACT (Chapter 42.56)

Public disclosure request for "all" agency documents is overbroad; documents are not exempt under "controversy" exemption in the former Public Disclosure Act; attorney-client privileged documents are exempt under the PDA. Hangartner v. City of Seattle, 151 Wn.2d 439 (2004) – July 04:07. Note that the 2005 Legislature amended the law to provide, among other things, that "agencies shall not deny a request for identifiable public records solely on the basis that the request is overbroad."

Where a violation of the former Public Disclosure Act is found, the trial court need not assess the penalty per record, but must assess a per day penalty for each day a record is wrongfully withheld. Yousoufian v. Office of Ron Sims, 152 Wn.2d 421 (2004) - January 05:06

Police report requested by child-victim's father is not exempt under former Public Disclosure Act, but is subject to redaction of highly offensive information. Koenig v. City of Des Moines, 123 Wn. App. 285 (Div. I, 2004) - January 05:16. Note that the Washington Supreme Court reversed this decision in part and affirmed it in part; see below, this topic.

Under Washington's former Public Disclosure Act, citizens do not have right to sift agency files to check for documents that agency credibly declares do not exist; also, agency is not required to create documents. Sperr v. City of Spokane & County of Spokane, 123 Wn. App. 132 (Div, III, 2004) – January 05:22

Police child-sexual-assault records could not be lawfully withheld under former Public Disclosure Act based on requestor's identification of victim. Koenig v. City of Des Moines, 158 Wn.2d 173 (2006) – October 06:15

Former Public Disclosure Act (now "Public Records Act") does not require DOC, under the facts of the case at hand, to provide personnel record on employee to an inmate. Livingston v. Cedeno**,** 135 Wn. App. 976 (Div. II, 2006) – January 07:22. Note that the Washington Supreme Court affirmed this Court of Appeals decision; see below, this topic.

Administrative inconvenience for a very small city does not excuse city's failure to strictly comply with the Public Records Act. Zink v. City of Mesa, 140 Wn. App. 328 (Div. III, 2007) – April 08:24

DOC's authority to screen prisoner mail trumps Public Records Act. Livingston v. Cedeno, 164 Wn.2d 46 (2008) – September 08:13

Identities of teachers accused of sexual misconduct with students, and identities of teachers who received "letters of direction," are exempt from public disclosure under current RCW 42.56.230(2) where misconduct is unsubstantiated - - disclosure would violate the right to privacy under the statute. Bellevue John Does v. Bellevue School District, 164 Wn.2d 199 (2008) – December 08:21

Metadata contained in e-mail from citizen to deputy mayor is a public record and subject to disclosure. O'Neill v. City of Shoreline, 145 Wn. App 913 (Div. I, 2008) – December 08:24

PUBLIC RESOURCE USE RE ELECTION, BALLOT PROPOSITION (RCW 42.17.130)

School teachers' use of e-mail and school mailboxes to promote ballot measure punishable by Public Disclosure Commission civil penalty under RCW 42.17.130 – "de minimis" use defense and constitutional challenges rejected. Herbert v. Washington PDC, 136 Wn. App. 249 (Div. I, 2006) – January 08:23

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

Crime of engaging in sexual intercourse with patient (RCW 9A.44.050(1)(d)) includes circumstance where health care provider makes inappropriate personal detour from professional duties. State v. Castilla, 121 Wn. App. 198 (Div. I, 2004) – June 04:22

When man ejaculated onto his stepdaughter's face while she slept, he committed child molestation by "touching" her with his penis even though his penis itself did not touch her body. State v. Jackson, 145 Wn. App. 814 (Div. I, 2008) – September 08:22

Under second degree rape statute, a victim is not "physically helpless" if able to communicate vocally. State v. Bucknell, 144 Wn. App. 524 (Div. III, 2008) – September 08:22

RESTITUTION (See also "Sentencing")

Father who paid shoplifting civil penalty entitled to restitution from his shoplifting juvenile son. State v. T.A.D., 122 Wn. App. 290 (Div. I, 2004) – November 04:22

Restitution duty applies broadly to juvenile rider in joyriding case. State v. Keigan C., 120 Wn. App. 604 (Div. I, 2004) – November 04:22

All juvenile participants in joyriding crime are jointly and severally liable under Juvenile Act for all restitution. State v. Hiett, 154 Wn.2d 560 (2005) – November 05:09

RIGHT TO TRAVEL

Trial court's banishment order held to be too broad and therefore to violate constitutional-right-to-travel protection. State v. Schimelpfenig, 128 Wn. App. 224 (Div. II, 2005) – January 07:22

ROBBERY (Chapter 9A.56 RCW)

Evidence that fleeing shoplifter grabbed store clerk during vehicular getaway was sufficient to support conviction for first degree robbery. State v. Decker, 127 Wn. App. 427 (Div. I, 2005) – August 05:21

Robbery conviction may not be based on force that a thief used to escape <u>after</u> the thief had abandoned the stolen property. State v. Johnson, 155 Wn.2d 609 (2005) – January 06:03

Showup identification procedure held not unduly suggestive; also, evidence held sufficient to support conviction for second degree robbery. State v. Brown, 128 Wn. App. 1 (Div. III, 2005) – February 06:16

Robbery evidence held sufficient to support convictions – written demands for money to bank tellers implied a threat in each case. State v. Shcherenkov, __ Wn. App. __ , 191 P.3d 99 (Div. II, 2008) – November 08:15

<u>SEARCHES</u> (See also Arrest, Stop and Frisk)

Abandoned property

Vehicle operator's advance consent to search vehicle was voluntary; but police seizure of passenger at gunpoint was not justified, and passenger's consequent abandonment of illegal drugs was therefore involuntary. State v. Reichenbach, 153 Wn.2d 126 (2004) – January 05:02

Omission from affidavit of facts regarding named informant's criminal history and pending matter on which informant was seeking leniency did not invalidate warrant search; also, the suspect's denial of any ownership or connection to a briefcase justified seizing the briefcase and seeking a warrant to search it based on probable cause. State v. Evans, 129 Wn. App. 211 (Div. II, 2005) – January 06:18; Note that the Washington Supreme Court reversed this decision; see below, this subtopic.

Court holds defendant's denial of ownership of locked briefcase that police seized – (a) without a warrant, consent, or exigent circumstances; and (b) in an area where defendant had a privacy interest – did not constitute voluntary abandonment of the briefcase (court also explains Washington's independent grounds "automatic standing" rule under article 1, section 7 of Washington constitution). State v. Evans, 159 Wn.2d 402 (2007) – March 07:15

Officer's continuation of detention of suspect after officer's original suspicions were dispelled held unlawful; "abandoned personal property" theory of the State is also rejected. State v. Veltri, 136 Wn. App. 818 (Div. III, 2007) – March 07:22

Administrative search warrants

Fourth Amendment held to require express statutory authority or court rule authority for administrative search warrant -- in civil case arising from a warrant search by City of Renton code compliance enforcement team, Supreme Court

rules that there was no authority for lower court's issuance of administrative search warrant. Bosteder v. City of Renton, 155 Wn.2d 18 (2005) – November 05:07

Agent of law enforcement

PUD workers held to be acting in concert with and hence as agents of police; therefore, check at residence for diversion of power held to be unlawful government search. State v. Orick, 129 Wn. App. 654 (Div. II, 2005) – December 05:15

Airport searches

No Fourth Amendment violation occurred in random selection of airline passenger for handheld magnetometer wand scanning. U.S. v. Marquez, 410 F.3d 612 (9th Cir. 2005) (decision filed June 7, 2005) – August 05:06

Under airport-search rule, after passenger places items on the conveyor belt and walks through the magnetometer, the passenger cannot choose to leave airport to avoid search. U.S. v. Aukai, 497 F.3d 955 (9th Cir. 2007) (decision filed August 10, 2007) – April 08:12

Anticipatory search warrants

Anticipatory search warrant fails because the "triggering event" was identified only in the supporting affidavit, and the resident at the premises was not shown a copy of the affidavit. U.S. v. Grubbs, 377 F.3d 1072 (9th Cir. 2004) (decision filed July 26, 2004) – October 04:04. Note that the U.S. Supreme Court reversed this decision; see below, this subtopic.

Execution of anticipatory search warrant held unlawful because anticipated triggering event – illegal drugs being taken into residence following controlled delivery – never occurred. State v. Nusbaum, 126 Wn. App. 160 (Div. II, 2005) – April 05:20

Under the Fourth Amendment, an anticipatory search warrant need not describe the triggering condition so long as the affidavit describes that condition and otherwise establishes probable cause. U.S. v. Grubbs, 126 S.Ct. 1494 (2006) – May 06:04

Apparent authority rule for consent searches

Where apartment leaseholder was present in bedroom, officers at entry door could not get valid consent to search from temporary guest; also, "apparent authority" rule does not apply to searches governed by article 1, section 7 of Washington constitution. State v. Morse, 159 Wn.2d 1 (2005) – February 06:02

Border search exception to warrant requirement

Federal border agents do not need reasonable suspicion under Fourth Amendment to justify removing and disassembling car's gas tank in search at international border. U.S. v. Flores-Montano, 124 S.Ct. 1582 (2004) – June 04:05

Community caretaking exception to warrant requirement

State loses on issues of 1) forced entry to enforce civil "arrest" warrant based on RCW 10.31.040; 2) "community caretaking" entry; and 3) harmless error; State wins on issues of 4) co-occupant status for purposes of consent search and 5) "fruit of the poisonous tree." State v. Thompson, 151 Wn.2d 793 (2004) – August 04:13

Officer's warrantless stop of car registered to person listed as "missing/endangered" was reasonable under "community caretaking function" exception to warrant requirement; also, examination of suspect's forearm did not exceed lawful scope of detention. State v. Moore, 129 Wn. App. 870 (Div. I, 2005) – January 06:07

Social guest with special-guest benefits has standing to challenge officer's warrantless entry of meth house; also, "community caretaking" and "plain view" exceptions to constitutional search warrant requirement not met. State v. Link, 136 Wn. App. 685 (Div. II, 2007) – March 07:18

The presence outside a house of two stolen 1000 gallon tanks of ammonia, plus the presence inside of suspects and the likelihood of a gun inside, justify warrantless search of house on alternative rationales of protective sweep, exigent circumstances and community caretaking. State v. Smith, 137 Wn. App. 262 (Div. III, 2007) – April 07:13

Mutual consent rule of Morse not met where two persons with equal authority were both on the premises and only one - - not defendant - - was asked for consent; also, community caretaking rationale for search not met because purpose of search was criminal investigation. State v. White, 141 Wn. App. 128 (Div. III, 2007) – January 08:05

Late-night presence of persons in house that neighbor "thought" was vacant, plus likely stolen truck in driveway, were not exigent circumstances justifying a non-consenting police entry of house; but evidence of un-dusty bindle convicts another defendant. State v. Ibarra-Raya, 145 Wn. App. 516 (Div. III, 2008) – September 08:13

Consent search exception to warrant requirement

Ferrier warnings are not required for officer's non-custodial request at roadside for consent to search purse prior to providing transportation. State v. Tagas, 121 Wn. App. 872 (Div. I, 2004) – July 04:13

State loses on issues of 1) forced entry to enforce civil warrant based on RCW 10.31.040; 2) "community caretaking" entry; and 3) harmless error; State wins on issues of 4) co-occupant status for purposes of consent search and 5) attenuation under the "fruit of the poisonous tree" principles of the Exclusionary Rule. State v. Thompson, 151 Wn.2d 793 (2004) – August 04:13

Warrantless search of home upheld based on defendant's advance consent as participant in roommate's electronic home-monitoring detention agreement. State v. Cole, 122 Wn. App. 319 (Div. II, 2004) – September 04:21

Vehicle operator's advance consent to search vehicle was voluntary; but police seizure of passenger at gunpoint was not justified, and passenger's consequent abandonment of illegal drugs was involuntary. State v. Reichenbach, 153 Wn.2d 126 (2004) – January 05:02

Officers' entry of suspect's rural property via driveway held not a "search;" also, suspect's consent to subsequent search is held valid, and evidence of methamphetamine manufacturing supports conviction. State v. Poling, 128 Wn. App. 659 (Div. II, 2005) – January 06:04

Where apartment leaseholder was present in bedroom, officers at entry door could not get valid consent to search from temporary guest; also, "apparent authority" rule does not apply to searches governed by article 1, section 7 of Washington constitution. State v. Morse, 159 Wn.2d 1 (2005) – February 06:02

Under the Fourth Amendment, if one cohabitant consents to a warrantless, non-exigent police search of a residence and another cohabitant is present and objects to the search, police do not have valid consent to search as against the objecting cohabitant; note that Washington's constitution is more restrictive and would require express consent from all present cohabitants, not just the absence of objection from one. Georgia v. Randolph, 126 S.Ct. 1515 (2006) – May 06:05

Where officers conducting a "consent" search of a car directed the disembarked, not-yet-seized, car occupants not to watch the search, the officers may have destroyed the continuing voluntariness, and hence the validity of, the consent. U.S. v. McWeeney, 454 F.3d 1030 (9th Cir. 2006) (decision filed July 21, 2006) – October 06:03

Child porn defendant still loses, but Ninth Circuit panel revises its Fourth Amendment rationale – he had reasonable privacy expectation in contents of his office computer, but his employer owned and actively controlled use of the computer, so employer could and did consent to FBI-instigated search of

contents of computer. U.S. v. Ziegler, 474 F.3d 1184 (9th Cir. 2007) (decision filed January 30, 2007) – March 07:13

Social guest with special-guest benefits has standing to challenge officer's warrantless entry of meth house; also, "community caretaking" and "plain view" exceptions to constitutional search warrant requirement not met. State v. Link, 136 Wn. App. 685 (Div. II, 2007) – March 07:18

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, 139 Wn. App. 424 (Div. II, 2007) October 07:11

Division Three addresses issues regarding: 1) reconstruction of telephonic search warrant affidavit; 2) citizen-informant veracity; 3) "any and all persons present" clause in search warrant; 4) plain view; and 5) consent to search given by un-Mirandized, in-custody, sleep-deprived suspect whose intelligence and education were not addressed in suppression hearing. State v. Garcia, 140 Wn. App. 609 (Div. III, 2007) – November 07:17

Mutual consent rule of Morse not met where two persons with equal authority were both on the premises and only one - - not defendant - - was asked for consent; also, community caretaking rationale for search not met because purpose of search was criminal investigation. State v. White, 141 Wn. App. 128 (Div. III, 2007) – January 08:05

Where 1) tenant of storage unit was allowing Murphy to live there and 2) Murphy had refused to consent to a search, the tenant could not lawfully consent to a search against Murphy's interest two hours later. U.S. v. Murphy, 516 F.3d 1117 (9th Cir. 2008) (decision filed February 20, 2008) – April 08:13

Correctional officer searches

DOC's authority to screen prisoner mail trumps Public Records Act. Livingston v. Cedeno, 164 Wn.2d 46 (2008) – September 08:13

DNA sample-taking at felony conviction

Ninth Circuit of the U.S. Court of Appeals reverses 3-judge panel's decision, and, under Fourth Amendment analysis, upholds federal statute requiring the taking of samples from convicted persons for DNA-testing-and-cataloging purposes. U.S. v. Kincade, 379 F.3d 813 (9th Cir. 2004) (decision filed August 18, 2004) – October 04:02

Statute authorizing taking of biological samples from felon for DNA ID profiling upheld against Fourth Amendment challenge. State v. Surge, 122 Wn. App. 448 (Div. I, 2004) – October 04:21. Note that the Washington Supreme Court affirmed this decision; see below, this subtopic.

Cheek swab is a permissible method for collecting biological sample from a convicted felon. State v. S.S., 122 Wn. App. 725 (Div. I, 2004) – October 04:22

Collecting DNA samples per RCW 43.43.754 from those convicted of felonies does not violate either the Federal constitution's Fourth Amendment or the Washington constitution's article 1, section 7. State v. Surge, 160 Wn.2d 65 (2007) – December 07:23

Emergency, exigent circumstances exception(s) to warrant requirement

No search, no unlawful seizure – where an instructor did a show-and-tell in a public presentation with a rifle that he had modified into a machine gun, he cannot make a privacy argument as to inspection of the illegal firearm that was seized at the time of the public showing. Also, the investigators' seizure of the firearm was justified under the "exigent circumstances" exception to the Fourth Amendment search warrant requirement. State v. Carter, 151 Wn.2d 118 (2004) – June 04:06

Prosecutorial misconduct of withholding exculpatory evidence from defense held to be so egregious as to require dismissal of charges and to bar re-trial. State v. Martinez, 121 Wn. App. 21 (Div. III, 2004) – March 05:19

Chrisman rule is applied to entry with a non-arrestee – trial court failed to make sufficient findings of officer-safety needs where officer entered apartment to follow a non-arrestee apartment resident who was going to a bedroom to retrieve a purse for a fellow apartment resident who had been arrested outside. State v. Kull, 155 Wn.2d 80 (2005) – November 05:03

Under the Fourth Amendment, the test of the Emergency Aid exception to the search warrant requirement is purely objective; beware, however: the tests for the Emergency Aid and Community Caretaking exceptions under the Washington constitution may include a subjective and/or no-pretext element. Brigham City, Utah v. Stuart, 126 S. Ct. 1943 (2006) – July 06:02

Exigent circumstances – DUI suspect would not take his hands out of his pockets and then fled into his home – under all of the circumstances the officer was justified in making a forcible warrantless residence entry to arrest the fleeing DUI suspect. State v. Wolters, 133 Wn. App. 297 (Div. II, 2006) – July 06:17

Screen door is nonetheless a door for Fourth Amendment privacy purposes, but officers had exigent circumstances and therefore were justified in opening the

screen door and going into residence without a warrant. U.S. v. Arellano-Ochoa, 461 F.3d 1142 (9th Cir. 2006) (decision filed August 31, 2006) – October 06:06

"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, 140 Wn. App. 223 (Div. II, 2007) – October 07:16. Note that the Court of Appeals reconsidered and replaced this opinion, retaining the original analysis rejecting the State's emergency exception argument, but adding analysis regarding a possible independent basis for the search warrant, and remanding the case for hearing; see April 08:25 LED and see subtopic of Exclusionary Rule below.

Emergency aid and exigent circumstances exceptions to search warrant requirement held to justify warrantless residential entry to look for victim in domestic violence investigation. U.S. v. Black, 466 F.3d 1143 (9th Cir. 2006) (decision filed October 26, 2006) – December 06:13

Government loses on community caretaking/emergency exception in case where officers entered shed based on chemical smell indicating a meth lab may be inside. State v. Lawson, 135 Wn. App. 430 (Div. II, 2006) – December 06:15

The presence outside a house of two stolen 1000 gallon tanks of ammonia, plus the presence inside of suspects and the likelihood of a gun inside, justify warrantless search of house on alternative rationales of protective sweep, exigent circumstances and community caretaking. State v. Smith, 137 Wn. App. 262 (Div. III, 2007) – April 07:13. Note that the Washington Supreme Court is currently reviewing this Court of Appeals decision.

Late-night presence of persons in house that neighbor "thought' was vacant, plus likely stolen truck in driveway, were not exigent circumstances justifying a non-consenting police entry of house; but evidence of un-dusty bindle convicts another defendant. State v. Ibarra-Raya, 145 Wn. App. 516 (Div. III, 2008) – September 08:13

Employer (public) authority to search for non-criminal investigation reasons

Sergeant had privacy interest in text messages viewed in audit - - agency policy stated that agency would monitor electronic communications, but 1) policy did not expressly address text messages, 2) by practice, officers were allowed to simply pay for excess pager usage, and 3) no pager audits had occurred in the past; also, agency was not justified in conducting full search on grounds that the agency was merely trying to determine whether to raise its text-messaging limits. Quon v. Arch Wireless Operating Company, Inc., 529 F.3d 892 (9th Cir. 2008) (decision filed June 18, 2008) – September 08:03

Entry of private premises to arrest (Payton/Steagald rules)

Payton rule violated where suspect arrested without warrant from inside his small trailer after he opened door while lying on his bed. U.S. v. Quaempts, 411 F.3d 1046 (9th Cir. 2005) (decision filed May 31, 2005) – September 05:04

Payton rule is applied under Washington constitution – misdemeanor arrest warrant justifies forcible warrantless entry to arrest; also, probable cause regarding arrestee's current place of residency (at time of police entry), not necessarily the address shown on the arrest warrant, determines what place may be entered. State v. Hatchie, 133 Wn. App. 100 (Div. II, 2006) – July 06:12. Note that the Washington Supreme Court affirmed this decision under revised analysis; see below, this subtopic.

Payton rule requiring warrant before officers make forcible arrest from residence in non-exigent circumstances is applied to 12-hour standoff that ended with the barricaded home occupant exiting his home. Fisher v. City of San Jose, 475 F.3d 1049 (9th Cir. 2007) (decision filed January 16, 2007) – March 07:11. On November 20, 2007, the 3-judge panel issued substitute majority and dissenting opinions, but the essence of the majority's holding remained the same. See 509 F.3d 952 (9th Cir. 2007); on March 14, 2008, a full panel of the Ninth Circuit decided to rehear the case, so the earlier decisions were withdrawn and the matter was set for further briefing and argument. See 519 F.3d 908 – May 08:16.

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, 161 Wn.2d 390 (2007) – October 07:06

Forcible warrantless entry to arrest ok under Payton v. New York based on bench warrant issued to defendant for his failure to comply with the terms of probation following his misdemeanor conviction. U.S. v. Gooch, 506 F.3d 1156 (9th Cir. 2007) (decision filed November 1, 2007) – February 08:02

DOC felony probation arrest warrant would have justified entry of mom's house if officers had developed reasonable suspicion to believe house was the warrant subject's current residence; but entry of a shed in the backyard did not meet this standard because officers had no grounds to believe suspect stayed there. State v. McKague, 143 Wn. App. 531 (Div. II, 2008) – June 08:19

Exclusionary Rule (see also subtopics "Good faith exception to exclusionary rule" and "Independent source exception to exclusionary rule")

State loses on issues of 1) forced entry to enforce civil warrant based on RCW 10.31.040; 2) "community caretaking" entry; and 3) harmless error. State wins on

issues of 4) co-occupant status for purposes of consent search and 5) "fruit of the poisonous tree." State v. Thompson, 151 Wn.2d 793 (2004) – August 04:13

"Independent source" rule applied: evidence seized under a search warrant is held admissible despite an unlawful police entry into a motel room - - after police had developed probable cause to search, but before they had applied for a search warrant. State v. Spring, 128 Wn. App. 398 (Div. I, 2005) – June 05:16

Officer's inadvertent attaching of wrong list of items to be seized results in overbroad search warrant, but evidence held admissible because the items actually seized were on the list of items that had been approved for seizure by the magistrate who issued the search warrant. U.S. v. Sears, 411 F.3d 1124 (9th Cir. 2005) (decision filed June 20, 2005) – September 05:13

"Independent source" exception to exclusionary rule applies under article 1, section 7 of Washington constitution. State v. Gaines, 154 Wn.2d 711 (2005) – October 05:04

Violation of the Fourth Amendment knock-and-announce requirement does not require suppression of evidence; but beware: Washington Supreme Court likely would require suppression based on RCW 10.31.040 or article 1, section 7 of the Washington constitution. Hudson v. Michigan, 126 S.Ct. 2159 (2006) – August 06:02

Evidence that was suppressed because State's warrantless-emergency-search rationale was rejected may be admissible based on affidavit's information that was not obtained in the unlawful warrantless search. State v. Leffler, 142 Wn. App. 175 (Div. II, 2007) – April 08:25

Execution of search warrant

In search warrant execution, a delay of several minutes before giving a copy of the warrant to the defendant does not require suppression of evidence. State v. Aase, 121 Wn. App. 558 (Div. II, 2004) – July 04:20

Using flash-bang device was excessive force where room into which device was blindly tossed was likely to be occupied by innocent bystanders. Boyd v. Benton County (Oregon), 374 F.3d 773 (9th Cir. 2004) (decision filed June 28, 2004) – September 04:09

Under the particular facts of the case, search warrant for deadly weapons and evidence of gang membership justified officers in keeping occupants of target residence in handcuffs for duration of search; also, the officers' asking an occupant questions about immigration status did not render detention unlawful under the Fourth Amendment. Muehler v. Mena, 125 S.Ct. 1465 (2005) – May 05:02

San Jose officers are denied qualified immunity in section 1983 federal civil rights case because: 1) they seized much more evidence during warrant searches than

was "reasonable"; and 2) they shot some dogs due to lack of prior reasonable law enforcement plan for entry into perimeter of one of residential properties targeted by one of search warrants. San Jose Charter of the Hells Angles Motorcycle Club v. City of San Jose, 402 F.3d 962 (9th Cir. 2005) (decision filed April 4, 2005) – August 05:08.

Starting search but delaying handing of search warrant to Spanish-only-speaking resident while waiting for interpreter to arrive held ok on totality of circumstances. U.S. v. Martinez-Garcia, 397 F.3d 1205 (9th Cir. 2005) (decision filed February 11, 2005) – October 05:02

Officer-safety concerns during search warrant execution justified holding two unknown, unclothed adult residents standing at gunpoint in their bedroom for a few minutes. L.A. County v. Rettele, 127 S.Ct. 1989 (2007) – September 07:02

Child porn search warrant execution held timely despite long delay in completion of computer search; affidavit held to meet constitutional probable cause and particularity requirements; also, State wins on sufficiency of evidence issue; but discovery issue requires reversal of child porn counts. State v. Grenning, 142 Wn. App. 518 (Div. II, 2008) – March 08:15

Officers executing search warrant at residence were not justified by objective, articulable safety concerns when they seized a non-resident who arrived at the scene just as the search was about to begin. State v. Smith, 145 Wn. App. 268 (Div. III, 2008) – August 08:18

Fourth Amendment standards' independence from state law

Virginia officers' search incident to custodial arrest for crime that was not subject to custodial arrest under Virginia law was valid search under the U.S. Constitution's Fourth Amendment stand-alone standards. Virginia v. Moore, 128 S.Ct. 1598 (2008) – July 08:02

Franks challenge to misstatement by affiant

Defendant did not make sufficient showing to trigger a Franks hearing to check officer's informant-based representations in search warrant affidavit. State v. O'Neal, 126 Wn. App. 395 (Div. II, 2005) – June 05:09

Search warrant holdings – 1) citizen informant status established for probable cause purposes despite informant's criminal history; 2) affiant's omission of some material facts about informant in presenting warrant request to commissioner not basis for suppression because affiant omission was not intentional or reckless; and 3) Washington constitution does not impose a different standard than does Fourth Amendment for assessing "material omissions" cases. State v. Chenoweth, 127 Wn. App. 444 (Div. I, 2005) – October

05:13. Note that the Washington Supreme Court affirmed this decision; see below, this subtopic.

Washington constitutional standard for challenges to affiant misstatements or omissions is same as federal standard; also, probable cause affidavit held to establish credibility of informant who was named and who gave statement against his penal interest. State v. Chenoweth, 160 Wn.2d 454 (2007) – September 07:04

Marijuana grower loses search warrant challenge - - (1) identity of citizen informant (CI) is protected; (2) no Franks hearing is needed to test truthfulness of affiant-officer; and (3) probable cause was established in officer's affidavit describing CI's information, plus corroboration. State v. Atchley, 142 Wn. App. 147 (Div. III, 2007) – February 08:10

Good faith exception to exclusionary rule

Superior court order that extended the period of "community placement" for a sex offender was invalid – therefore, a warrantless "good faith" CCO search based on that erroneous community placement was unlawful; also, the "good faith" of police officers following up the CCO search with searches under warrants was irrelevant and not justification. State v. Wallin, 125 Wn. App. 648 (Div. I, 2005) – June 05:17

Identity of confidential informant (disclose or protect)

Marijuana grower loses search warrant challenge: (1) identity of citizen informant (CI) is protected; (2) no Franks hearing is needed to test truthfulness of affiant-officer; and (3) probable cause was established in officer's affidavit describing CI's information, plus corroboration. State v. Atchley, 142 Wn. App. 147 (Div. III, 2007) – February 08:10

Impound/inventory exception to warrant requirement

Objectively-based "manifest necessity" justified officers' impound-inventory look for possible meth lab in car's trunk; in follow-up warrant application, affidavit failed to show sufficient background of unnamed citizen informants to meet Aguilar-Spinelli probable cause test, but other information in affidavit re officer's observing of meth-related materials in car's passenger area gave probable cause for car trunk search. State v. Ferguson, 131 Wn. App. 694 (Div. III, 2006) – April 06:17

WSP may be liable for damages based on former policy of mandatory impound of vehicles of suspended drivers. Potter v. Washington State Patrol, 161 Wn.2d 335 (2007) – February 08:09. Note that the Washington Supreme Court re-heard argument to consider whether the "conversion" theory of the lawsuit is barred on grounds that the exclusive remedy for wrongful impound is under RCW 46.55.120; on November 26,

2008, in a decision that will be digested in the 2009 LED, the Supreme Court ruled against WSP on the exclusive remedy issue.

Incident to arrest (motor vehicle) exception to warrant requirement

Putting suspended driver in back seat of patrol car and telling him he is under arrest is held not to constitute a "custodial arrest" for "search incident" purposes – 1) where driver was not frisked, searched or handcuffed; and 2) where he was allowed to use his cell phone to make multiple phone calls while in the back seat of the patrol car. State v. Radka, 120 Wn. App. 43 (Div. III, 2004) – March 04:11

Officer's individual practice of making custodial arrests of all DWLS violators held not to violate statutes giving discretionary authority either to merely issue citation or instead to make full custodial arrest. State v. Pulfrey, 120 Wn. App. 270 (Div. I, 2004) – April 04:17. Note that the Washington Supreme Court affirmed this decision; see below, this subtopic.

Fourth Amendment allows vehicle search incident to arrest even though suspect was first contacted after he got out of his car; time and space proximity reasonably connected the suspect, his car and his suspicious activity, thus justifying warrantless search of his car under the "bright line" rule of New York v. Belton. Thornton v. U.S., 124 S.Ct. 2127 (2004) – July 04:02

Vehicle search held not "incident to arrest" because arrestee was not close enough to his vehicle when arrest was made. State v. Rathbun, 124 Wn. App. 372 (Div. II, 2004) – January 05:08

Hatchback area of car is searchable under Fourth Amendment "search incident" rule for vehicles. U.S. v. Mayo, 394 F.3d 1271 (9th Cir. 2005) (decision filed January 4, 2005) – March 05:07

"Search incident to arrest" rule is still a "bright line" rule under the Fourth Amendment (the rule is the same under article 1, section 7 of the Washington constitution.) U.S. v. Osife, 398 F.3d 1143 (9th Cir. 2005) (decision filed February 22, 2005) – June 05:04

When officer has discretion whether to make custodial arrest (such as for DWLS), officer may wait until after motor vehicle "search incident" to exercise that discretion. State v. Pulfrey, 154 Wn.2d 517 (2005) – August 05:09

Redmond v. Moore does not mean that pre-2005 arrests for DWLS third degree were unlawful arrests. State v. Carnahan, 130 Wn. App. 159 (Div. II, 2005); State v. Potter, 129 Wn. App. 494 (Div. III, 2005); State v. Olinger, 130 Wn. App. 22 (Div. III, 2005); State v. Holmes, 129 Wn. App. 24 (Div. I, 2005); and State v. Pacas, 130 Wn. App. 446 (Div. III, 2005) – January 06:22. Note that the Washington Supreme Court affirmed the Potter and Holmes decisions; see below, this subtopic.

Search ruled to be close enough in time to arrest to be deemed "incident to arrest" even though for safety reasons officers – before starting – waited 10 to 15 minutes for third officer to arrive. U.S. v. Weaver, 433 F.3d 1104 (9th Cir. 2006) (decision filed January 10, 2006) – March 06:02

Supreme Court upholds searches incident to arrests for DWLS in the third degree that were made before the Supreme Court decided Redmond v. Moore. State v. Potter, State v. Holmes, 156 Wn.2d 835 (2006) – May 06:14

Delayed follow-up K-9 sniff of van following suspect's arrest from van held to be impermissible second search under article 1, section 7 of Washington constitution; also, corpus delicti rule is applied based on the suppression of the evidence seized in the search. State v. Valdez, 137 Wn. App. 280 (Div. II, 2007) – April 07:08. Note that the Washington Supreme Court is currently reviewing this decision.

Custodial arrest and search-incident of motor vehicle passenger not wearing seatbelt held justified based on his giving officer a false name and false date of birth. State v. Malone, 136 Wn. App. 545 (Div. III, 2007) – May 07:22

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) – October 07:14. Note that the Washington Supreme Court is currently reviewing this decision.

Car frisk upheld where officer-safety concerns were based on a 7-year-old child's report that a car's driver had pointed a gun at the child; court also rules that search was conducted "incident to arrest" (but this alternative ruling is questionable under the definition of "arrest" set out in State v. Radka and State v. O'Neill precedents). State v. Glenn, 140 Wn. App. 627 (Div. I, 2007) – November 07:08

In independent grounds ruling under article 1, section 7, a police search is held not to have occurred incident to arrest for violation of RCW 46.61.021(3) where the arresting officer's request for identification from passenger was not in relation to investigation of the seatbelt violation (that prosecutor later claimed as objective justification for the arrest under RCW 46.61.021(3)). State v. Moore, 161 Wn.2d 880 (2007) – December 07:16

Where, after being stopped for DWLS, driver was told by officer that pickup would be towed, and driver then got out and locked his pickup before officer formally placed him under arrest for DWLS, pickup was not subject to search incident to arrest under article 1, section 7 of the Washington constitution. State v. Quinlivan, 142 Wn. App. 960 (Div. III, 2008) – March 08:02

State v. Parker's article 1, section 7 Washington constitutional rule for vehicle search-incident regarding containers possibly owned by non-arrested persons is held to apply similarly whether the arrest is of driver or passenger; court rejects driver's apparent defense theory that, as to non-arrested driver, the entire cab of the vehicle was off limits as a container known to belong to the driver. State v. Bello, 142 Wn. App. 930 (Div. I, 2008) – March 08:07

Because arrest process began when arrestee was two houses away from car he had just parked, car could not be lawfully searched incident to arrest. U.S. v. Caseres, 533 F.3d 1064 (9th Cir. 2008) (decision filed July 21, 2008) – October 08:09

After officer pulled in behind DWLS suspect's parked car and turned on her emergency lights, the suspect could not lawfully thwart a search incident to arrest by getting out of the car and, after officer ordered him to get back in car, locking the doors. State v. Adams, 146 Wn. App. 595 (Div. I, 2008) – November 08:11

Incident to arrest (non–vehicle search) exception to warrant requirement

Search of DWLS detainee's pants pocket held to have been incident to arrest, even though officer did not at the time say the words, "you are under arrest." State v. Gering, 146 Wn. App. 564 (Div. III, 2008) – November 08:09

"Independent Source" exception to exclusionary rule

"Independent source" rule applied where evidence seized under a search warrant is held admissible despite an unlawful police entry into a motel room - - the officers made the unlawful entry after they had developed probable cause to search, but before they applied for the search warrant. State v. Spring, 128 Wn. App. 398 (Div. I, 2005) – June 05:16

"Independent Source" exception to Exclusionary Rule applies under article 1, section 7 of Washington constitution. State v. Gaines, 154 Wn.2d 711 (2005) – October 05:04

Jail booking inventory of personal effects

No warrant needed for a "second look" in the jail property room at personal effects that were taken at booking; Washington Supreme Court also looks at question of admissibility of expert testimony regarding assessing the reliability of eyewitness identification. State v. Cheatam, 150 Wn.2d 626 (2003) – February 04:05

Knock and Announce (RCW 10.31.040 and constitutional requirements)

Exigency justified forced entry where officers executing a search warrant for cocaine entered after they "knocked and announced" their identity and purpose,

and then waited 15 to 20 seconds with no response before they entered. U.S. v. Banks, 124 S.Ct. 521 (2003) – January 04:02

State loses on issues of 1) forced entry to enforce civil warrant based on RCW 10.31.040; 2) "community caretaking" entry; and 3) harmless error; State wins on issues of 4) co-occupant status for purposes of consent search and 5) "fruit of the poisonous tree." State v. Thompson, 151 Wn.2d 793 (2004) – August 04:13

Announcements without actual knocks held reasonable under totality of circumstances for officers executing warrant at meth-cooking house. U.S. v. Combs, 394 F.3d 739 (9th Cir. 2005) (decision filed January 11, 2005) – September 05:08

Violation of the Fourth Amendment knock-and-announce requirement does not require suppression of evidence; but beware: Washington Supreme Court likely would require suppression based on RCW 10.31.040 or article 1, section 7 of the Washington constitution. Hudson v. Michigan, 126 S.Ct. 2159 (2006) – August 06:02

Section 1983 civil rights case jury upheld on its reasonableness finding where officers waited 5 to 8 seconds, after knocking and announcing, before beginning their efforts to force home's steel security door to execute narcotics search warrant. Howell v. Polk, 532 F.3d 1025 (9th Cir. 2008) (decision filed July 16, 2008) – October 08:03

Open View (See also "Privacy expectations, scope of constitutional protections")

In failure-to-use-fish-guard case, State wins on issues of: 1) "open view," 2) Miranda-custody, and 3) seizing-of-property-without-prior-hearing. State v. Creegan, 123 Wn. App. 718 (Div. III, 2004) – January 05:13

Fourth Amendment does not restrict law enforcement use of dog sniff of car at traffic stop if duration of stop not extended by sniffing; different rule might apply under Washington constitution's article 1, section 7. Illinois v. Caballes, 125 S.Ct. 834 (2005) – March 05:03

Revisiting Illinois v. Caballes for LED editorial comments on the implications for Washington officers of the U.S. Supreme Court's Fourth Amendment ruling addressing the use of drug-sniffing dogs at routine traffic stops. – April 05:02

Game agent's approach to home via back driveway was lawful, and he had "open view" of elk carcass in poaching suspect's open garage; unlawfulness of agent's subsequent warrantless entry to seize carcass is irrelevant; and Miranda warnings were not required for non-custodial questioning. State v. Posenjak, 127 Wn. App. 41 (Div. III, 2005) – August 05:14

Outrageous police behavior allegation (sting, undercover activity)

Fake-attorney ruse by police to get murder suspect to lick and send envelope did not violate constitutional privacy protections; nor did it violate RCW 9.73.020; nor was the ruse so outrageous as to require dismissal of case under CrR 8.3(b); also, defendant gave valid waiver of his Miranda rights prior to questioning despite his refusal to sign a waiver form. State v. Athan, 160 Wn.2d 354 (2007) – August 07:02

FBI agent's undercover investigation of NAMBLA ruled lawful. U.S. v. Mayer, 503 F.3d 740 (9th Cir. 2007) (decision filed Sept. 17, 2007) – November 07:03

Particularity requirement

In civil rights case, Fourth Amendment held to have been violated where search was conducted under a warrant in which ATF agent made clerical error by failing to specify the items that were to be seized; qualified immunity is denied to the ATF agent who prepared the warrant and who led other officers in the search. Groh v. Ramirez, 124 S.Ct. 1284 (2004) – April 04:02

Under unique circumstances, search warrant upheld even though it did not identify a specific crime under investigation; also, evidence held sufficient to convict of second degree theft, criminal harassment, stalking, and criminal libel. State v. Askham, 120 Wn. App. 872 (Div. III, 2004) – June 04:18

Evidence held sufficient to support convictions for harassment and for communication with a minor for immoral purposes; search warrant withstands challenges based on tests for probable cause, particularity and staleness. State v. Hosier, 124 Wn. App. 696 (Div. I, 2004) **–** May 05:15. Note that the Washington Supreme Court affirmed this Court of Appeals decision; see below, this subtopic.

Officer's inadvertent attaching of wrong list of items to be seized results in overbroad search warrant, but evidence held admissible because the items actually seized were on the list of items that had been approved for seizure by the magistrate who issued the search warrant. U.S. v. Sears, 411 F.3d 1124 (9th Cir. 2005) (decision filed June 20, 2005) – September 05:13

Search warrant authorizing search for "certain evidence of a crime, to-wit: 'assault 2nd DV'" held to be too vague as to items sought and hence to fail particularity requirement of the Fourth Amendment. State v. Higgins, 136 Wn. App. 87 (Div. II, 2006) – February 07:16

Fourth Amendment particularity requirement not met by warrant to search for evidence of criminal activity relating to "child sex". State v. Reep, 161 Wn.2d 808 (2007) – November 07:04

Division Three addresses issues regarding: 1) reconstruction of telephonic search warrant affidavit; 2) citizen-informant veracity; 3) "any and all persons present" clause in search warrant; 4) plain view; and 5) consent to search given

by un-Mirandized, in-custody, sleep-deprived suspect whose intelligence and education were not addressed in suppression hearing. State loses its argument on "any and all persons present" issue and on consent issue, but error by trial court is held harmless in light of the other evidence in the case that was properly admitted. State v. Garcia, 140 Wn. App. 609 (Div. III, 2007) – November 07:17

Child porn search warrant execution held timely despite long delay in completion of computer search; affidavit held to meet constitutional probable cause and particularity requirements; also, State wins on sufficiency of evidence; but discovery issue requires reversal of child porn counts. State v. Grenning, 142 Wn. App. 518 (Div. II, 2008) – March 08:15

Plain view authority to seize evidence

Container that was marked "Bushmaster" and that officers noted was very similar to containers they themselves used as "gun cases" did not meet "single purpose container" standards under Fourth Amendment "plain view" analysis. U.S. v. Gust, 405 F.3d 797 (9th Cir. 2005) (decision filed April 26, 2005) – September 05:15

Evidence held admissible under plain view standard where officer was familiar with style of jewelry stolen from store, and officer also noted that some piece of jewelry that suspect was wearing still had price tags on them. State v. Garcia, 140 Wn. App. 609 (Div. III, 2007) – November 07:17

Pretext challenge generally not applicable to warrant search

"Pretext" challenge asserting police were actually hoping to see drug evidence in plain view does not succeed because police got the warrant to search for a person on the premises, and the supporting affidavit established (1) probable cause to arrest a person, and (2) probable cause that the person would be present at the target premises when the warrant was executed. State v. Busig, 119 Wn. App. 381 (Div. III, 2003) – February 04:16

Privacy expectation, scope of constitutional protections (see also subtopic of "Open View")

No warrant needed for a "second look" in the jail property room at personal effects that were taken at booking; Supreme Court also looks at question of admissibility of expert testimony regarding assessing the reliability of eyewitness identification. State v. Cheatam, 150 Wn.2d 626 (2003) – February 04:05

No search, no unlawful seizure – where an instructor did show-and-tell in a public presentation with a rifle that he had modified into a machine gun, he cannot make a privacy argument as to inspection of the illegal firearm that was seized at the time of the public showing. Also, the investigators' seizure of the firearm was

justified under the "exigent circumstances" exception to the Fourth Amendment search warrant requirement. State v. Carter, 151 Wn.2d 118 (2004) – June 04:06

Ninth Circuit reverses panel decision, and, under Fourth Amendment analysis, upholds federal statute requiring the taking of samples from convicted persons for DNA-testing-and-cataloging purposes. U.S. v. Kincade, 379 F.3d 813 (9th Cir. 2004) (decision filed August 18, 2004) – October 04:02

Statute authorizing taking of biological samples from felon for DNA ID profiling upheld against Fourth Amendment challenge. State v. Surge, 122 Wn. App. 448 (Div. I, 2004) – October 04:21. Note that the Washington Supreme Court affirmed this Court of Appeals decision; see below, this subtopic.

Randomly checking guest registers of motels held lawful under article 1, section 7 of the Washington Constitution. State v. Jorden, 126 Wn. App. 70 (Div. II, 2005) - April 05:07. Note that the Washington Supreme Court reversed this Court of Appeals decision; see below, this subtopic.

Warrantless search of truck hopper following staged garbage pickup violates article 1, section 7 of Washington Constitution under the garbage-can privacy rule of State v. Boland. State v. Sweeney, 125 Wn. App. 881 (Div. III, 2005) – April 05:15

Area near defendant's garage was a protected private area under article 1, section 7 of the Washington constitution. State v. Boethin, 126 Wn. App. 695 (Div. II, 2005) – June 05:05

Midnight, camouflaged entry onto and search of backyard portion of marijuana grower's isolated, two-acre parcel of rural property, where the front drive had "no trespassing" and "private property" signs, held to violate grower's privacy rights under the state and federal constitutions, even though the portion of the property entered was not marked with such signs (backyard area searched was conclusorily labeled by Court of Appeals as "curtilage"). State v. Littlefair, 129 Wn. App. 330 (Div. II, 2005) – November 05:13

PUD workers held to be acting in concert with and hence as agents of police; therefore, check at residence for diversion of power held to be unlawful government search. State v. Orick, 129 Wn. App. 654 (Div. II, 2005) – December 05:15

Officers' entry of suspect's rural property via driveway held not a "search"; also, suspect's consent to subsequent search is held valid, and evidence of methamphetamine manufacturing supports conviction. State v. Poling, 128 Wn. App. 659 (Div. II, 2005) – January 06:04

No Fourth Amendment privacy for employee in his workplace computer where employer: 1) owned computer, 2) had policy and practice of routinely monitoring computer, and 3) had prohibition against private use. U.S. v. Ziegler, 456 F.3d

1138 (9th Cir. 2006) (decision filed August 8, 2006) – October 06:02. Note that this opinion was later withdrawn, and the privacy analysis abandoned; instead, the Ninth Circuit ruled for the government based on employer consent. See subtopic of "consent search exception to warrant requirement" above.

Search warrant affidavit established that computer contained images of minors engaged in sexually explicit conduct, though court would have preferred that the affiant attach copies of the images to the affidavit. U.S. v. Battershell, 457 F.3d 1048 (9th Cir. 2006) (decision filed August 10, 2006) – October 06:08

In appeal from aggravated first degree murder conviction and death sentence, the sentence is reversed, but conviction is affirmed, and: 1) evidence held sufficient; 2) police initiation of contact with charged rape defendant to question him on unrelated murder case held OK under federal Sixth Amendment right-to-counsel protection; and 3) government's investigative use in the murder case of DNA evidence previously obtained in rape case held OK. State v. Gregory, 158 Wn.2d 759 (2006) – February 07:05

Motel guest registries held private under the search warrant requirement of article 1, section 7 of Washington constitution. State v. Jorden, 160 Wn.2d 121 (2007) – July 07:18

Fake-attorney ruse by police to get murder suspect to lick and send envelope did not violate constitutional privacy protections; nor did it violate RCW 9.73.020; nor was the ruse so outrageous as to require dismissal of case under CrR 8.3(b); also, defendant gave valid waiver of his Miranda rights prior to questioning despite his refusal to sign a waiver form. State v. Athan, 160 Wn.2d 354 (2007) – August 07:02

Officers acted lawfully in attempt to contact arrest warrant subject by daylight approach to home on rural property despite "no trespassing" sign (area was "impliedly open" to public and officers were on "legitimate police business"); also, probable cause for search warrant for meth operation held sufficient and not stale; but meth manufacturing sentencing enhancements for "armed" crime and for manufacturing in presence of minor reversed. State v. Ague-Masters, 138 Wn. App. 86 (Div. II, 2007) – August 07:15

Reserve undercover officer's extraterritorial taping of conversation in drug dealer's home held OK against challenges based on (1) Washington constitutional privacy protection, (2) chapter 9.73 RCW, and (3) chapter 10.93 RCW. State v. Barron, 139 Wn. App. 266 (Div. I, 2007) – September 07:18

FBI agent's undercover investigation of NAMBLA ruled lawful under Fourth Amendment. U.S. v. Mayer, 503 F.3d 740 (9th Cir. 2007) (decision filed September 17, 2007) – November 07:03

Use by State Department of Financial Institutions of statutorily authorized administrative subpoena to obtain subject's bank records violates article 1, section 7, of Washington constitution; Washington Legislature generally lacks power to grant such subpoena power to executive branch agencies. State v. Miles, 160 Wn.2d 236 (2007) – November 07:07

Collecting DNA samples per RCW 43.43.754 from those convicted of felonies does not violate either the Federal constitution's Fourth Amendment or the Washington constitution's article 1, section 7. State v. Surge, 160 Wn.2d 65 (2007) – December 07:23

"No trespassing and" "keep out" signs, plus closed gate at entrance of long driveway and secluded, remote location of home add up to conclusion that the access route to the front door of the home were not impliedly open to the public under state or federal constitution. State v. Jessen, 142 Wn. App. 852 (Div. III, 2008) – March 08:12

Under former WSU residence halls rule, WSU students held to have a shared privacy right against warrantless, unconsented, non-exigent police entry into residential floor hallways. State v. Houvener, 145 Wn. App. 408 (Div. III, 2008) – August 08:14

Sergeant had privacy interest in text messages viewed in audit. Agency policy stated that agency would monitor electronic communications, but 1) policy did not expressly address text messages, 2) by practice, officers were allowed to simply pay for excess pager usage, and 3) no pager audits had occurred in the past; also, agency was not justified in conducting full search on grounds that the agency was merely trying to determine whether to raise its text-messaging limits. Quon v. Arch Wireless Operating Co. and City of Ontario, California, 529 F.3d 892 (9th Cir. 2008) – September 08:03

No privacy right in computer file-sharing system that was accessible to others on a peer-to-peer network. U.S. v. Ganoe, 538 F.3d 1117 (9th Cir. 2008) – October 08:07

"Private search doctrine"

Washington constitution's article 1, section 7 does not include Fourth Amendment doctrine that permits law enforcement officers to search without a search warrant those objects and areas that a private person has already searched; note that this ruling does not affect the Exclusionary Rule doctrine, applicable in Washington as it is elsewhere, that generally allows evidence that is obtained and brought to the police or prosecutors by private citizens acting on their own initiative (even if unlawfully) to be admitted, because no government wrongdoing is involved in the obtaining of the evidence. State v. Eisfeldt, 163 Wn.2d 628 (2008) – July 08:09

Probable cause to search

Affidavit for child porn search warrant fails to justify search, as it fails to establish probable cause that suspect who accessed a child porn website actually downloaded child porn. U.S. v. Gourde, 382 F.3d 1003 (9th Cir 2004) (decision filed September 2, 2004) – November 04:02

State wins on issues of 1) probable cause for search warrant; 2) justification for Terry seizure and frisk; and 3) sufficiency of evidence to support conviction for methamphetamine manufacturing. State v. Jacobs, 121 Wn. App. 669 (Div. II, 2004) – November 04:08

If new facts are learned after search warrant's issuance but before its execution, police need not return to magistrate unless new facts negate probable cause; new facts did not negate PC as to ongoing drug-dealing. State v. Maddox, 152 Wn.2d 499 (2004) – December 04:18

Affidavit for search warrant held to meet both prongs of the Aguilar-Spinelli test for informant-based probable cause; also, the information provided by the identified informant was not stale. State v. Merkt, 124 Wn. App. 607 (Div. III, 2004) **–** February 05:15

Citizen informants, even though named in search warrant affidavit, held not shown to have credibility for purposes of informant-based probable cause standard under Aguilar-Spinelli. State v. McCord, 125 Wn. App. 888 (Div. III, 2005) – May 05:11

Evidence held sufficient to support convictions for harassment and for communication with a minor for immoral purposes; search warrant withstands challenges based on tests for probable cause, particularity and staleness. State v. Hosier, 124 Wn. App. 696 (Div. I, 2004) **–** May 05:15. Note that the Washington Supreme Court affirmed this Court of Appeals decision but did not address the search warrant questions; see topics above for "communicating with a minor for immoral purposes" and "harassment."

Probable cause for warrant to seize and search computer and storage media for child pornography established by affidavit stating adult male took nude pictures of 16-year-old girl who posed, with assistance of others, as birthday present to defendant. State v. Griffith, 115 Wn. App. 357 (Div. III, 2005) – September 05:20

Search warrant holdings – 1) citizen informant status established for probable cause purposes despite informant's criminal history; 2) affiant's omission of some material facts about informant in presenting warrant request to issuing magistrate not basis for suppression because affiant omission was not intentional or reckless; and 3) Washington constitution, article 1, section 7, does not impose a different standard than Fourth Amendment for assessing "material omissions" cases. State v. Chenoweth, 127 Wn. App. 444 (Div. I, 2005) – October

05:13. Note that the Washington Supreme Court affirmed this decision; see below, this subtopic.

Objectively-based "manifest necessity" justified officers' impound-inventory look for possible meth lab in car's trunk; in follow-up warrant application, affidavit failed to show sufficient background of unnamed citizen informants to meet Aguilar-Spinelli PC test, but other information in affidavit re officer's observing of meth-related materials in car's passenger area gave probable cause for car trunk search. State v. Ferguson, 131 Wn. App. 694 (Div. III, 2006) – April 06:17

Probable cause to search suspect's computer for child porn established by affidavit explaining, among other things, that the suspect subscribed to a child porn website for the website's final two months before the government shut the website down. U.S. v. Gourde, 440 F.3d 1065 (9th Cir. 2006) (decision filed March 9, 2006) – May 06:12

Search warrant affidavit established that computer contained images of minors engaged in sexually explicit conduct, though court would have preferred that affiant attach copies of the images to the affidavit. U.S. v. Battershell, 457 F.3d 1048 (9th Cir. 2006) (decision filed August 10, 2006) – October 06:08

Search of residence for illegal drugs under warrant upheld when defendant's Thein-nexus-probable-cause challenge to affidavit fails (seller left the residence shortly before the sale and returned to it shortly after the sale). State v. G.M.V., 135 Wn. App. 366 (Div. III, 2006) – December 06:21

Affidavit describing suspect's receipt of 9 e-mails with many attachments all with child pornography content established probable cause to search suspect's computer for child pornography. U.S. v. Kelley, 482 F.3d 1047 (9th Cir. 2007) (decision filed April 9, 2007) – May 07:04

Officers acted lawfully in attempt to contact arrest warrant subject by daylight approach to home on rural property despite "no trespassing" sign (area was "impliedly open" to public and officers were on "legitimate police business"); also, probable cause for search warrant for meth operation held sufficient and not stale; but meth manufacturing sentencing enhancements for "armed" and for manufacturing in presence of minor reversed. State v. Ague-Masters, 138 Wn. App. 86 (Div. II, 2007) – August 07:15

Washington constitutional standard for challenges to affiant misstatements or omissions is same as federal standard; also, probable cause affidavit held to establish credibility of informant who was named and who gave statement against his penal interest. State v. Chenoweth, 160 Wn.2d 454 (2007) – September 07:04

Judge who issued search warrant lawfully reviewed warrant in suppression hearing; also, information given against penal interest helps establish credibility of informant in probable cause affidavit. State v. Chamberlin, 161 Wn.2d 30 (2007) – September 07:07

Division Three addresses issues regarding: 1) reconstruction of telephonic search warrant affidavit; 2) citizen-informant veracity; 3) "any and all persons present" clause in search warrant; 4) plain view; and 5) consent to search given by un-Mirandized, in-custody, sleep-deprived suspect whose intelligence and education were not addressed in suppression hearing. State v. Garcia, 140 Wn. App. 609 (Div. III, 2007) – November 07:17

Marijuana grower loses search warrant challenge: (1) identity of confidential citizen informant is protected; (2) no Franks hearing is needed to test truthfulness of affiant-officer; and (3) probable cause was established in officer's affidavit describing informant's information, plus corroboration. State v. Atchley, 142 Wn. App. 147 (Div. III, 2007) – February 08:10

Child porn search warrant execution held timely despite long delay in completion of computer search; affidavit held to meet constitutional probable cause and particularity requirements; also, State wins on sufficiency of evidence issue; but discovery issue requires reversal of child pornography counts. State v. Grenning, 142 Wn. App. 518 (Div. II, 2008) – March 08:15

Officers lawfully obtained search warrant even though defendant had showed them a medical marijuana authorization; also, medical marijuana defense based on anger and anxiety conditions failed at trial because these medical conditions do not come within the "qualifying patient" definition. State v. Fry, 142 Wn. App. 456 (Div. III, 2008) – March 08:22. Note that the Washington Supreme Court is reviewing this Court of Appeals decision.

Probationer, parolee searches

Because probation officers investigating suspected violation had probable cause to believe that probationer lived at a residence, it was lawful for the officers to force entry without a search warrant. U.S. v. Mayer, 530 F.3d 1099 (9th Cir. 2008) (decision filed June 30, 2008) – October 08:15

Civil rights lawsuit will go forward on plaintiffs' allegations that officers looking for a parole violator unlawfully forced a warrantless entry of their home without probable cause to believe that the parolee lived there. Cuevas v. De Roco, 531 F.3d 726 (9th Cir. 2008) (decision filed June 27, 2008) – October 08:15

Protective sweeps

"Protective sweep" during search warrant execution held unjustified because no reasonable officer-safety concerns were present; also, affidavit for warrant held not to meet either prong of Aguilar-Spinelli test for informant-based probable cause. State v. Boyer, 124 Wn. App. 593 (Div. III, 2004) February 05:10

Protective sweep held justified under facts of case because only one of the two armed robbery suspects had been seized as police responded to incident at illegal gambling rooms. U.S. v. Paopao, 469 F.3d 760 (9th Cir. 2006) (decision filed November 22, 2006) – February 07:02

The presence outside a house of two stolen 1000-gallon tanks of ammonia, plus the presence inside of suspects and the likelihood of a gun inside, justify warrantless search of house on alternative rationales of protective sweep, exigent circumstances and community caretaking. State v. Smith, 137 Wn. App. 262 (Div. III, 2007) – April 07:13. Note that the Washington Supreme Court is currently reviewing this decision.

Scope of search under search warrant

Child porn found during search under warrant to search computer for evidence relating to ID-documents-crimes held admissible because the officer was not intentionally searching for the porn, and the officer did not conduct an intentional search for that evidence until after he obtained a second search warrant. U.S. v. Giberson, 527 F.3d 882 (9th Cir. 2008) (decision filed May 30, 2008) – August 08:03

Staleness of probable cause

Affidavit for search warrant held to meet both prongs of the Aguilar-Spinelli test for informant-based probable cause; also, the information provided by the identified informant was not stale. State v. Merkt, 124 Wn. App. 607 (Div. III, 2004) **–** February 05:15

Evidence held sufficient to support convictions for harassment and for communication with a minor for immoral purposes; search warrant withstands challenges based on tests for probable cause, particularity and staleness. State v. Hosier, 124 Wn. App. 696 (Div. I, 2004) – May 05:15; note that the Washington Supreme Court affirmed this Court of Appeals decision but did not address the search warrant questions; see the topics above for "communicating with a minor for immoral purposes" and "harassment."

Standing

Court holds defendant's denial of ownership of locked briefcase that police seized – (a) without a warrant, consent, or exigent circumstances; and (b) in an area where defendant had a privacy interest – did not constitute voluntary abandonment of the briefcase (court also explains Washington's independent grounds "automatic

standing" rule under article 1, section 7 of Washington constitution). State v. Evans, 159 Wn.2d 402 (2007) – March 07:15

Strip search

Unconstitutionality ruling issued as to California county jail's policy that led to strip searching of woman arrested on a misdemeanor charge of being under the influence of a controlled substance. Way v. Ventura County, 445 F.3d 1157 (9th Cir. 2006) (decision filed April 20, 2006) – August 06:05

Jail held civilly liable for violating Washington strip search statute in automatically strip searching arrestee who was in custody pending release on bail. Plemmons v. Pierce County, 134 Wn. App. 449 (Div. II, 2006) – October 06:16

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, 495 F.3d 645 (9th Cir. 2007) (decision filed July 17, 2007) – October 07:02. Note that the 3-judge Ninth Circuit panel is rehearing argument in this case; see the next entry in this subtopic.

Strip search ruling in section 1983 civil rights lawsuit withdrawn by Ninth Circuit; 3-judge panel to rehear case involving strip search of trespasser at stationhouse. Edgerly v. City and County of San Francisco, 527 F.3d 841 (9th Cir. 2008) (rehearing order filed May 22, 2008) – July 08:03

San Francisco jail policy of strip searching without reasonable suspicion all pre-trial detainees who are to be placed in general population held to violate Fourth Amendment. Bull v. City and County of San Francisco, 539 F.3d 1193 (9th Cir. 2008) (decision filed August 22, 2008) – October 08:11

Subpoenas

Use by State Department of Financial Institutions of statutorily authorized administrative subpoena to obtain subject's bank records violates article 1, section 7, of Washington constitution; Washington Legislature generally lacks power to grant such subpoena power to government executive branch agencies. State v. Miles, 160 Wn.2d 236 (2007) – November 07:07

Suppression hearing procedures

Judge who issued search warrant lawfully reviewed warrant in suppression hearing; also, information given against penal interest helps establish credibility of informant in probable cause affidavit. State v. Chamberlin, 161 Wn.2d 30 (2007) – September 07:07

Telephonic search warrants

Where judge gave telephonic authorization for search, but no one prepared and executed a written warrant, search was warrantless, and the search violated the Washington constitution because the circumstances did not fall within any of the exceptions to the warrant requirement. State v. Ettenhofer, 119 Wn. App. 300 (Div. II, 2003) – Jan 04:12

Division Three addresses issues regarding: 1) reconstruction of telephonic search warrant affidavit; 2) citizen-informant veracity; 3) "any and all persons present" clause in search warrant; 4) plain view; and 5) consent to search given by un-Mirandized, in-custody, sleep-deprived suspect whose intelligence and education were not addressed in suppression hearing. State v. Garcia, 140 Wn. App. 609 (Div. III, 2007) – November 07:17

Timing of execution of search warrant

Child porn search warrant execution held timely despite long delay in completion of computer search; affidavit held to meet constitutional probable cause and particularity requirements; also, State wins on sufficiency of evidence; but discovery issue requires reversal of child porn counts. State v. Grenning, 142 Wn. App. 518 (Div. II, 2008) – March 08:15

Wildlife officer check for hunters (RCW 77.15.080)

WDFW officer's stop of pickup truck containing warmly dressed driver and passenger as truck was exiting one-lane dirt road on opening day of elk season held reasonable under RCW 77.15.080(1) as a justified WDFW officer stop to check possible hunters. Schlegel v. DOL, 137 Wn. App. 364 (Div. III, 2007) – May 07:14. Note that the Washington Supreme Court is reviewing this decision.

SECURITIES LAW (Chapter 21.20 RCW)

Financial note was a "security" within the meaning of chapter 21.20 RCW and therefore securities fraud conviction is upheld. State v. Pedersen, 122 Wn. App. 759 (Div. I, 2004) – March 05:19

SENTENCING (See also "Restitution")

Sentence prohibiting predator-of-elderly thief from working as caretaker for elderly or disabled persons upheld. State v. Acrey, 135 Wn. App. 938 (Div. I, 2006) – January 07:20

Trial court's banishment order held to be too broad and therefore to violate constitutional-right-to-travel protection. State v. Schimelpfenig, 128 Wn. App. 224 (Div. II, 2005) – January 07:22

Officers acted lawfully in attempt to contact arrest warrant subject by daylight approach to home on rural property despite "no trespassing" sign (area was "impliedly open" to public and officers were on "legitimate police business"); also, probable cause for search warrant for meth operation held sufficient and not stale; but meth manufacturing sentencing enhancements for "armed" and for manufacturing in presence of minor reversed. State v. Ague-Masters, 138 Wn. App. 86 (Div. II, 2007) – August 07:15

RCW 9.94A.533(5) drugs-in-jail sentencing enhancement does not apply to arrestee who had methamphetamine in his sock that was discovered in search when he was booked into jail. State v. Eaton, 143 Wn. App. 155 (Div. II, 2008) – April 08:24

Moving rifle onto a bed, but not taking it, during an interrupted burglary does not constitute being "armed" for purposes of either (1) burglary-in-the-first degree statute, or (2) "armed crime" sentence enhancement under RCW 9.94A. 533(3). State v. Brown, 162 Wn.2d 422 (2007) – August 08:04

SEX OFFENDER REGISTRATION (RCW 9A.44.130–145)

Sex offender was not required to re-register when he moved out of house but owner allowed him to continue to sleep nights in his car in the driveway and to get mail and phone service there. State v. Stratton, 130 Wn. App. 760 (Div. II, 2005) – March 06:20

Sex offender's conviction for failure to register upheld - - evidence on 1) change-of- residence and 2) knowledge elements of crime held sufficient to support conviction. State v. Shoemaker-Castillo, 144 Wn. App. 584 (Div. III, 2008) – October 08:17

SEXUAL EXPLOITATION OF CHILDREN (Chapter 9.68A RCW) (See "Child pornography" and "Communicating with a minor for immoral purposes")

SEXUAL HARASSMENT

Male inmates' pervasive pattern of exhibitionist masturbating and other behavior results in sexually hostile environment for which California correctional institution is responsible to female correctional officers. Deanna Freitag v. Ayers, 468 F.3d 528 (9th Cir. 2006) (decision filed September 29, 2006) – January 07:05

SIXTH AMENDMENT RIGHT TO CONFRONTATION

Restrictions on admissibility of "testimonial" hearsay are tightened under the Sixth Amendment's confrontation clause. Crawford v. Washington, 124 S.Ct. 1354 (2004) – May 04:20

Trial court's admission of "excited utterance" evidence did not violate Sixth Amendment's confrontation clause under Crawford rule. State v. Orndorff, 122 Wn. App. 781 (Div. II, 2004) – November 04:20

29-month-old child's statement to doctor held admissible under "medical diagnosis" hearsay exception and not "testimonial" under Crawford's Sixth Amendment "confrontation clause" interpretation. State v. Fisher, 130 Wn. App. 1 (Div. II, 2005) – June 05:11

911 report by victim of ongoing DV crime held to meet Crawford test for "nontestimonial" – and hence admissible – hearsay under Sixth Amendment confrontation clause. Davis v. Washington and Hammon v. Indiana, 126 S.Ct. 2266 (2006) – September 06:03

Domestic violence victim's Smith statement held admissible against hearsay and confrontation clause challenges. State v. Thach, 126 Wn. App. 297 (Div. II, 2005) – October 06:22

In child molestation prosecution, child witness held to have been available for Crawford confrontation clause purposes. State v. Price, 158 Wn.2d 630 (2006) – January 07:07

Objections based on 1) hearsay evidence rule and 2) Sixth Amendment right of confrontation rejected in case where drug buyer used an accomplice/agent to purchase illegal drugs from undercover officer, and officer later testified to what the drug-buying accomplice/agent said. State v. Chambers, 134 Wn. App. 853 (Div. II, 2006) – January 07:17

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, 160 Wn.2d 910 (2007) – October 07:10. Note that the U.S. Supreme Court's 2008 decision in Giles v. California effectively overrules the Mason decision; see below, this topic.

Under Crawford-Davis right-of-confrontation test, excited utterances that victim made to investigating officer were not "testimonial" when considered in light of the totality of the circumstances of the case. State v. Ohlson, 162 Wn. App. 1 (2007) – February 08:05

Forfeiture-by-wrongdoing hearsay exception held limited by the U.S. Constitution's Sixth Amendment confrontation clause to circumstance where defendant had motive to make declarant unavailable. Giles v. California, 128 S.Ct. 2678 (2008) – September 08:02

SIXTH AMENDMENT RIGHT TO COUNSEL (See also "Criminal Rule 3.1" and "Interrogations and Confessions")

Sixth Amendment required that police give Miranda warnings prior to questioning indicted defendant in his kitchen even though defendant was not in custody; case is remanded to 8th Circuit of U.S. Court of Appeals to determine if 5th Amendment's limit on exclusion of evidence applies to this 6th Amendment violation. Fellers v. U.S., 124 S.Ct. 1019 (2004) – March 04:05

Trial court must obtain evidence from cellmate-informant to determine if charged defendant's Sixth Amendment right to counsel was violated. Randolph v. California, 380 F.3d 1133 (9th Cir. 2004) (decision filed August 19, 2004) – November 04:05

Sixth Amendment's initiation-of-contact restriction is not triggered by a tribal court arraignment. U.S. v. Charley, 396 F.3d 1074 (9th Cir. 2005) (decision filed February 3, 2005) – August 05:06

Pre-sentence interview of convicted murderer by DOC employee held not subject to Fifth Amendment Miranda warnings requirement or subject to Sixth Amendment counsel protection. State v. Everybodytalksabout, 131 Wn. App. 227 (Div. I, 2006) – April 06:22. The Washington Supreme Court reversed this decision; see below, this topic.

Partially handcuffed murder suspect's waiver of Fifth and Sixth Amendment rights prior to custodial questioning by FBI agents valid - - and Criminal Rule 3.1 not violated - - because, although suspect asked agents about the process for appointing counsel, he made clear that he was willing to be questioned without a lawyer; also, jailhouse informant could testify because police did not make him their "agent" for Sixth Amendment purposes. State v. Whitaker, 135 Wn. App. 923 (Div. I, 2006) – August 06:18

In appeal from aggravated first degree murder conviction and death sentence, the sentence is reversed, but conviction is affirmed, and: 1) evidence held sufficient; 2) police initiation of contact with charged rape defendant to question him on unrelated murder case held OK under federal constitution's Sixth Amendment right-to-counsel protection; and 3) government's use in the murder case of DNA evidence previously obtained in rape case held OK. State v. Gregory, 158 Wn.2d 759 (2006) – February 07:05

Sixth Amendment right to counsel held violated by CCO's post-conviction, pre-sentencing interview. State v. Everybodytalksabout, 161 Wn.2d 702 (2007) – October 07:09

SPEEDY ARRAIGNMENT/SPEEDY TRIAL

Striker/Greenwood speedy arraignment/speedy trial rule under CrR 3.3 violated where State did not try, as defendant had earlier requested, to locate him through his attorney. State v. Austin, 119 Wn. App. 319 (Div. II, 2003) – May 04:21

No violation of Striker/Greenwood speedy arraignment/speedy trial rule where defendant was out of state and not incarcerated there during relevant pre-arraignment period. State v. Hessler, 123 Wn. App. 200 (Div. III, 2004) – May 05:13

STALKING (RCW 9A.46.110)

Under unique circumstances, search warrant upheld even though it did not identify a specific crime under investigation; also, evidence held sufficient to convict of second degree theft, harassment, stalking, and criminal libel. State v. Askham, 120 Wn. App. 872 (Div. III, 2004) – June 04:18

Stalking statute's phrase "intentionally and repeatedly harassing or following another person" receives pro-State interpretation. State v. Kintz, 144 Wn. App. 515 (Div. I, 2008) – August 08:24

Stalking statute itself includes acting through other persons, so stalking conviction stands even though jury was not instructed on accomplice liability. State v. Becklin, 163 Wn.2d 519 (2008) – October 08:16

TAMPERING WITH A WITNESS (RCW 9A.72.120)

Indirect witness tampering is still "witness tampering"; also, 1990 Rempel decision distinguished. State v. Williamson, 120 Wn. App. 903 (Div. II, 2004) – June 04:21

TELEPHONE HARASSMENT (RCW 9.61.230)

Telephone harassment - - decision creates a split in Washington appellate courts - - Division Two disagrees with Division One and holds under RCW 9.61.230 that State must prove that call was initiated with intent to harass, intimidate, torment or embarrass victim. State v. Lilyblad (aka Stephanie Rena Paris), 134 Wn. App. 462 (Div II, 2006) – October 06:20. Note that the Washington Supreme Court affirmed this decision by Division Two; see below, this topic.

To establish telephone harassment, State must prove intent to harass the victim was formed when the defendant initiated the call. State v. Lilyblad, 163 Wn.2d 1 (2008) – April 08:14

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

Used generator stolen from rental business not shown to be worth over $1500 for purposes of first degree theft statute. State v. Morley, 119 Wn. App. 939 (Div. III. 2004) – April 04:18

Under unique circumstances, search warrant upheld even though it did not identify a specific crime under investigation; also, evidence held sufficient to convict of second degree theft, criminal harassment, stalking, and criminal libel. State v. Askham, 120 Wn. App. 872 (Div. III, 2004) – June 04:18

Card dealer who committed gambling crimes to get big tips from players was lawfully convicted of first degree theft. State v. Heffner, 126 Wn. App. 803 (Div. III, 2005) – December 05:20

Evidence held sufficient to support conviction for attempted first degree theft in case involving police sting of defendants who told major lies in "selling" a used truck to the officers. State v. George (and George), 132 Wn. App. 654 (Div. I, 2006) – September 06:11. Note that the Washington Supreme Court affirmed this decision; see below, this topic.

Evidence held insufficient to convict for theft because attempt to "hot wire" car was never completed. State v. R.L.D., 132 Wn. App. 699 (Div. II, 2006) – September 06:21

Evidence held sufficient to support jury verdict that value of stolen rings was over $1500. State v. Hermann, 138 Wn. App. 596 (Div. III, 2007) – August 07:21

Evidence held sufficient to support conviction for attempted first degree theft in case involving police sting of defendants who told significant lies in attempting to sell a used truck to the officers. State v. George (and George), 161 Wn.2d 203 (2007) – January 08:02

Evidence (1) that defendant knew - - and that other participant did not know - - target home's security code, and (2) that defendant was one of three persons seen running from burgled premises, held sufficient to support his convictions for burglary and theft based on accomplice theory; hence, Court of Appeals rejects defendant's claim that he was a non-participant who just happened to be at the scene. State v. B.J.S., 137 Wn. App. 622 (Div. II, 2007) – January 08:12

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

Traffic code does not require that a driver signal in turning from a private driveway onto a public roadway. Therefore, officer's traffic stop of driver for not signaling held unlawful. State v. Brown, 119 Wn. App. 473 (Div. II, 2003) – Feb 04:14

Failure to transfer MV title not a "continuing" offense – arrest and "search incident" held unlawful. State v. Green, 150 Wn.2d 740 (2004) – March 04:08. Note that the 2008 Washington Legislature amended the failure-to-transfer-title offense to make it a "continuing" offense. See May 08 LED:7-8.

Drivers' license suspensions (mostly DWLS 3 offenses) without opportunity for prior hearing held unconstitutional under federal due process analysis. City of Redmond v. Moore, 151 Wn.2d 664 (2004) – July 04:06; August 04:23; October 04:22.

Hit-and-run under RCW 46.52.020 - - (1) where defendant's aborted lane change, even though lawful, caused another vehicle to swerve and collide with a third vehicle, defendant was "involved in an accident" even though defendant's vehicle did not collide with anything; (2) and defendant's "knowledge" of the others' accident was supported by the evidence, both because a reasonable person would have seen the skidding second vehicle, and because others observed defendant acting nervously after the accident. State v. Perebeynos, 121 Wn. App. 189 (Div. I, 2004) – July 04:17

Washington's seat belt law upheld against vagueness attack under the specific facts of the Eckblad case. State v. Eckblad, 152 Wn.2d 515 (2004) – January 05:07

"Recklessly" findings by trial court support its conclusion of law that defendant committed "reckless endangerment" in relation to auto accident. State v. Graham, 153 Wn.2d 400 (2005) – March 05:11

"Reckless manner" under vehicular homicide and vehicular assault statutes means driving in a rash or heedless manner, indifferent to the consequences. - State v. Roggenkamp, 153 Wn.2d 614 (2005) – April 05:07

Vehicular homicide jury instructions upheld – State not required to causally connect defendant's intoxication and victim's death. State v. Morgan, 123 Wn. App. 810 (Div. I, 2004) – June 05:20

Drivers' license suspensions based on conviction of certain criminal offenses are held constitutional. City of Redmond v. Bagby, 155 Wn.2d 59 (2005), and City of Bremerton v. Hawkins, 155 Wn.2d 107 (2005) – October 05:07

In light of the arresting officer's concession in testimony that, at the time of the arrest, the vehicle was safely off the roadway, physical control conviction is held unsupportable. City of Spokane v. Beck, 130 Wn. App. 481 (Div. III, 2005) – March 06:15

Bicycling at night requires light and reflector even if riding on sidewalk; residue of methamphetamine supports possession conviction. State v. Rowell, 138 Wn. App. 780 (Div. III, 2007) – September 07:16

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) – October 07:22

"Reckless manner" means the same under felony eluding statute as it does under vehicular homicide and vehicular assault statutes. State v. Ratliff, 139 Wn. App. 1015 (Div. III, 2007) – January 08:19

Despite failure of hospital to follow strict procedures of RCW 46.61.506 for testing and preserving blood, because sample was taken at hospital for medical purposes, it can be admitted as "other evidence" of DUI; but results of law enforcement testing of second such hospital sample subsequently obtained by law enforcement for investigative purposes cannot be admitted in DUI prosecution. State v. Charley, 136 Wn. App. 58 (Div. III, 2006) – January 08:21

Where motor vehicle passenger was injured in a DUI crash, she was a "victim" under RCW 9A.08.020(5), and therefore she could not lawfully be convicted of DUI as an accomplice. State v. Hedlund, 137 Wn. App. 494 (Div. I, 2007) – January 08:22; note that the Washington Supreme Court is currently reviewing this Court of Appeals decision.

Vandalizing a police vehicle was not "use" of the vehicle in a felony, and therefore the driver's license of the vandal may not be revoked under RCW 46.20.285(4). State v. B.E.K., 141 Wn. App. 742 (Div. II, 2007) – April 08:24

TRESPASS (Chapter 9A.52 RCW)

Apartment complex driveway included under trespass notice even if driveway "impliedly open to the public" for some purposes. State v. Bellerouche, 129 Wn. App. 912 (Div. I, 2005) – January 06:16

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

Evidence of delivery of drugs was sufficient to convict seller who used middleman; also, co-conspirator statements held admissible under hearsay rules. State v. Rangel-Reyes, 119 Wn. App. 494 (Div. III, 2003) – Feb 04:09

Evidence held sufficient to support convictions for unlawful possession of firearm, unlawful manufacture of a controlled substance, and criminal mistreatment; evidence also supports sentence enhancement for meth manufacturing with children present. State v. Holt, 119 Wn. App. 712 (Div. II, 2004) – March 04:18

Evidence held sufficient to support conviction for possessing methamphetamine with intent to deliver. State v. Goodman, 150 Wn.2d 774 (2004) – August 04:21

State wins on issues of 1) probable cause for search warrant; 2) justification for Terry seizure and frisk; and 3) sufficiency of evidence to support conviction for

methamphetamine manufacturing. State v. Jacobs, 121 Wn. App. 669 (Div. II, 2004) – November 04:08

Drug crime of "unlawful possession" does not contain "knowledge" element and is not unconstitutionally vague. State v. Bradshaw, 152 Wn.2d 528 (2004) – January 05:08

Evidence supports methamphetamine-manufacturing conviction. State v. Keena, 121 Wn. App. 143 (Div. II, 2004) – June 05:14

"Constructive possession" – fingerprints on mason jar plus proximity to item are not enough to support conviction based on the State's theory of "construction possession" of illegal drugs in the jar. State v. Cote, 123 Wn. App. 546 (Div. III, 2004) – June 05:20

Federal "Controlled Substances Act" does not violate federal constitution's commerce clause in its application to California's medical-use-of-marijuana law. Gonzales v. Raich, 125 S.Ct. 2195 (2005) – August 05:04

Defense under Washington's Medical Marijuana Act held not met by facts of case; also, the Washington Act is held to supersede and absolutely preclude a common law defense of "medical necessity." State v. Butler, 126 Wn. App. 741 (Div. II, 2005) – August 05:24

Under Washington Medical Use of Marijuana Act, where defendant in marijuana possession case was not presently caring for glaucoma sufferer and was designated only to obtain marijuana for him, defendant did not qualify as a "primary caregiver". State v. Mullins, 128 Wn. App. 633 (Div. II, 2005) – October 05:17

Affirmative defenses under Washington's Medical Use of Marijuana Act interpreted: marijuana grower presented sufficient evidence for jury to consider whether she was "qualifying patient" but not enough for jury to consider whether she was "primary caregiver". State v, Ginn, 128 Wn. App. 872 (Div. II, 2005) – October 05:20

Only physicians licensed in Washington may prescribe medical use of marijuana under Washington Medical Use of Marijuana Act. State v. Tracy, 115 Wn. App. 381 (Div. II, 2005) – October 05:21

Proceeds of illegal drug trafficking may not be forfeited without tracing the proceeds to particular drug transaction. Tri-City Metro Drug Task Force v. Contreras, 129 Wn. App. 648 (Div. III, 2005) – December 05:19

Officers' entry of suspect's rural property via driveway held not a "search"; also, suspect's consent to subsequent search is held valid, and evidence of

methamphetamine manufacturing supports conviction. State v. Poling, 128 Wn. App. 659 (Div. II, 2005) – January 06:04

Evidence held sufficient to support convictions for possessing pseudoephedrine with intent to manufacture methamphetamine. State v. Moles, Conn and Cambra, 130 Wn. App. 461 (Div. II, 2005) – February 06:18

Despite fact that defendant admitted that he stole pseudoephedrine to pay off a debt to a "meth cook," corpus delicti is held not established for possessing ephedrine or pseudoephedrine with intent to manufacture methamphetamine; thus, confession of defendant is held inadmissible under corpus delicti rule. State v. Whalen, 131 Wn. App. 58 (Div. II, 2005) – March 06:22

RCW 9A.42.100 prohibition against endangering dependent children during methamphetamine manufacture is not limited to parents, custodians or caregivers of such children. State v. Cooper, 156 Wn.2d 475 (2006) – April 06:03

Probable cause for arrest found; also, county ordinance prohibiting possession of drug paraphernalia with intent to use is upheld against preemption attack. State v. Fisher, 132 Wn. App. 26 (Div. I, 2006) – May 06:16

Evidence sufficient to support conviction for manufacturing methamphetamine. State v. Forrester, 135 Wn. App. 195 (Div. II, 2006) – January 07:14

Under Washington's "Medical Use of Marijuana Act," California doctor's prior authorization does not qualify patient for "compassionate use" defense. State v. Tracy, 158 Wn.2d 683 (2006) – February 07:13

Forfeiture of $118,134 in suspected drug cash found in crashed plane upheld against sufficiency-of-the-evidence challenge in light of packaging of cash, pilot's failure to declare this large amount of money before leaving on Canada-bound flight, presence of drug ledger, presence of small amount of marijuana, retrofitting of plane for cargo, and low altitude flying; also, claimant's due process challenge to forfeiture proceedings based on delay of hearing is rejected. Sam v. Okanogan County Sheriff's Office, 136 Wn. App. 220 (Div. III, 2006) – February 07:20

Officers acted lawfully in attempt to contact arrest warrant subject by daylight approach to home on rural property despite "no trespassing" sign (area was "impliedly open" to public and officers were on "legitimate police business"); also, probable cause for search warrant for meth operation held sufficient and not stale; but meth manufacturing sentencing enhancements for "armed" and for manufacturing in presence of minor reversed. State v. Ague-Masters, 138 Wn. App. 86 (Div. II, 2007) – August 07:15

Bicycling at night requires light and reflector even if riding on sidewalk; residue of methamphetamine supports possession conviction. State v. Rowell, 138 Wn. App. 780 (Div. III, 2007) – September 07:16

Where defendant obtained doctor's documentation one day after police seized his marijuana plants, but before he talked to police, he had valid defense under Medical Marijuana Act. State v. Hanson, 138 Wn. App. 322 (Div. III, 2007) – September 07:23

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, 140 Wn. App. 181 (Div. I, 2007) – October 07:19

Parents of adult son lose vehicle drug-forfeiture case where they raised innocent owner defense as to two family cars. In re the Forfeiture of One 1970 Chevrolet Chevelle, 140 Wn. App. 802 (Div. I, 2007) – November 07:12

Corpus delicti, sufficiency of evidence, and ID-request-to-passenger questions addressed in prosecution for robbery, possession of ephedrine with intent to manufacture meth, and attempted manufacture of meth. State v. Brockob, 159 Wn.2d 311 (2007) – February 08:08

Officers lawfully obtained search warrant even though defendant had showed them a medical marijuana authorization; also, medical marijuana defense based on anger and anxiety conditions fails at trial because "qualifying patient" definition not met. State v. Fry, 142 Wn. App. 456 (Div. III, 2008) – March 08:22. Note that the Washington Supreme Court is currently reviewing this Court of Appeals decision.

Evidence held sufficient to prove use of drug paraphernalia where there was marijuana in baggie, plus apparent drug residue in pipe and tin, all of which were in backpack searched incident to arrest. State v. O'Meara, 143 Wn. App. 638 (Div. II, 2008) – August 08:22

Late-night presence of persons in house that neighbor "thought' was vacant, plus likely stolen truck in driveway, were not exigent circumstances justifying a non-consenting police entry of house; but evidence of un-dusty bindle convicts another defendant. State v. Ibarra-Raya, 145 Wn. App. 516 (Div. III, 2008) – September 08:13

Crime of "involv[ing]" a person under age 18 in a drug transaction does not cover merely allowing a minor to be present during a drug deal. State v. Flores, 164 Wn.2d 1 (2008) – September 08:11

Defendant's fingerprints on items in pickup cab and in pickup canopy area in which he was found hiding held in 2-1 ruling not sufficient evidence of "constructive possession" to support methamphetamine manufacturing conviction. State v. Enlow, 143 Wn. App. 463 (Div. III, 2008) – September 08:19

UNLAWFUL IMPRISONMENT (RCW 9A.40.040)

Inmate receiving visitor at jail violated no-contact order; also, circumstances surrounding an assault in a car support a separate unlawful imprisonment conviction. State v. Washington, 135 Wn. App. 42 (Div. I, 2006) – October 06:11

Evidence that defendant assaulted child and then ordered her into living room held sufficient to support unlawful imprisonment conviction; phone call by officer to suspect held not custodial questioning, and hence Miranda held not applicable. State v. Davis, 133 Wn. App. 415 (Div. III, 2007) – June 07:14

VAGUENESS DOCTRINE

Washington's seat belt law upheld against vagueness attack under the specific facts of the Eckblad case. State v. Eckblad, 152 Wn.2d 515 (2004) – January 05:07

Drug crime of "unlawful possession" does not contain "knowledge" element and is not unconstitutionally vague. State v. Bradshaw, 152 Wn.2d 528 (2004) – January 05:08

VIDEOTAPE PRIVACY PROTECTION ACT (FEDERAL)

Article: Beware of 1988 federal "Videotape Privacy Protection Act." – May 04:04

VIENNA CONVENTION AND CONSULAR NOTIFICATION

Note: Vienna Convention on Consular Relations remains in effect. – May 05:22

"Vienna Convention on Consular Relations" – Civil liability held in one federal circuit court decision to be possible for police violation of this treaty. Jogi v. Voges, 425 F.3d 367 (7th Cir. 2005) (decision filed September 27, 2005) – November 05:02; note that the Seventh Circuit issued a revised opinion in this case, but with the same result; see below, this topic.

Vienna Convention on Consular Relations held not to require suppression of statements taken by officers under circumstances where the treaty has been violated. Sanchez-Llamas v. Oregon, Bustillo v. Johnson, 126 S.Ct. 2669 (2006) – September 06:02

"Vienna Convention on Consular Relations" – Civil Rights Act liability held to be possible for police violation of this treaty. Jogi v. Voges, 480 F.3d 822 (7th Cir. 2007) (decision filed March 12, 2007) – May 07:02

"Vienna Convention on Consular Relations" – Civil Rights Act liability held not to be possible for police violation of this treaty; Ninth Circuit disagrees with Seventh Circuit of the U.S. Court of Appeals. Cornejo v. County of San Diego, 504 F.3d 853 (9th Cir. 2007) (decision filed Sept. 24, 2007) – November 07:02

Texas courts are not required to comply with President Bush's memorandum directing the states to give effect to international court's ruling under the Vienna Convention on Consular Relations. Medellín v. Texas, 128 S.Ct. 1346 (2008) – June 08:18

VOYEURISM (RCW 9A.44.115)

Father's voyeurism conviction upheld against his constitutional and sufficiency-of-the-evidence challenges. State v. Stevenson, 114 Wn. App. 699 (Div. II, 2005) – October 05:23

Evidence of voyeurism held sufficient to support conviction – peeping over top of toilet stall held to have occurred "for more than a brief period of time, in other than a casual or cursory manner." State v. Fleming, 137 Wn. App. 645 (Div. III, 2007) – June 07:19

Voyeurism statute upheld against vagueness challenge in case involving "upskirt" photographing by high school custodian. State v. Boyd, 137 Wn. App. 910 (Div. II, 2007) – May 08:23

Child pornography convictions overturned where defendant had taken pictures of his 15-year-old stepdaughter without her knowledge - - this was voyeurism, not child pornography. State v. Whipple, 144 Wn. App. 654 (Div. II, 2008) – August 08:20

WAPA SUMMARY ON CONFESSIONS, SEARCH, SEIZURE AND ARREST

Article notes that WAPA staff attorney Pam Loginsky's 2008 summary on confessions, search, seizure and arrest is accessible on the CJTC's internet LED page. – July 08:02

WILDLIFE PROTECTION (See "Fish and Wildlife Crimes")

WITNESS TAMPERING (Chapter 9A.72 RCW)

Evidence sufficient to convict for HIV assault and witness tampering. State v. Whitfield, 132 Wn. App. 787 (Div. II, 2006) – September 06:15