SUBJECT MATTER INDEX FOR LED'S FROM 1999-2003

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

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ABATEMENT FOR DRUG NUISANCE

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

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

ACCOMPLICE LIABILITY (RCW 9A.08.020)

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

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

Federal "Pinkerton Doctrine" on accomplice liability does not apply under RCW's. State v. Stein, 144 Wn.2d 236 (2001) – Oct 01:14

Accomplice liability statute's "knowledge" element clarified in drive–by murder case; also, bribery law does not preclude plea–bargain for testimony. State v. Sarausad, 109 Wn. App. 824 (Div. I, 2001) – Nov 02:20

Accomplice–liability instruction prejudicially failed to explain knowledge–of–intended–crime element properly. State v. Grendahl, 110 Wn. App. 905 (Div. III, 2002) – Nov 02:22

In conspiracy case involving pawnshop owner and home–invasion robbers, court addresses issues of: (1) knowledge element of accomplice liability; (2) admissibility of co–conspirator hearsay; (3) tolling of statute of limitations for persons out of state; and (4) scope of restitution in conspiracy cases. State v. King, 113 Wn. App. 243 (Div. I, 2002) – July 03:21

ADA – AMERICANS WITH DISABILITIES ACT

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

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

ADDRESS CONFIDENTIALITY

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

ALIENS (See also "Vienna Convention on Consular Relations")

Civil rights liability – several-hour detention of non–suspect and unjustified investigation into her citizenship violated Fourth Amendment. Mena v. City of Simi Valley, 322 F.3d 1255 (9th Cir. 2003) – Oct 03:03

ANIMAL CRUELTY

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

"ARMED WITH A DEADLY WEAPON"

Evidence held sufficient to support sentence enhancement for being armed with a deadly weapon at the time of commission of a crime. State v. Schelin, 104 Wn. App. 48 (Div. III, 2000) – March 01:16 Affirmed by the Washington Supreme Court; see below, this topic.

"Armed with a deadly weapon at the time of commission of the crime" sentencing provision receives conflicting interpretations in split decision favoring the state. State v. Schelin, 147 Wn.2d 562 (2002) – Feb 03:07

ARREST, STOP AND FRISK

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

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

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

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

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

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

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

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

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

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

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

"Pretext stop" found where patrol officer followed suspect's car from drug hot spot several blocks before seeing traffic violation. State v. DeSantiago, 97 Wn. App. 446 (Div. III, 1999) – Nov 99:12

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

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

Terry stop of man urinating in public ok'd, and warrant check held ok as well. State v. Villarreal, 97 Wn. App. 636 (Div. III, 1999) – Dec 99:19

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

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

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

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

First amendment bars warrantless arrest of self–touching nude dancers. Furfaro v. City of Seattle, 97 Wn. App. 537 (Div. I, 1999) – March 00:15 Reversed in part by the Washington Supreme Court; see below, this topic.

Oregon State Police officer with WSP commission but no CJTC certificate held not authorized to take action in Washington; but exclusion of evidence not required. State v. Barker, 98 Wn. App. 439 (Div. II, 1999) – April 00:08 Exclusionary ruling of Division Two reversed by the Washington Supreme Court; evidence excluded; see below, this topic.

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

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

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

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

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

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

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

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

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

Roadblock program for illegal drugs in high crime areas violates Fourth Amendment. City of Indianapolis v. Edmond, 531 U.S. 32 (2001) – Jan 01:02

Staats v. Brown Update — Authority To Arrest For F&W Violations – March 01:03

When vehicle passenger gave false name during traffic stop, officers were justified in requesting identification documents from that passenger and in making subsequent arrest based on "open view" of illegal drugs. State v. Cook, 104 Wn. App. 186 (Div. III, 2001) – March 01:07

Warrant to arrest convicted–but–not–yet–sentenced felon for violating terms of release pending appeal may be based on less than probable cause. State v. Fisher, 104 Wn. App. 772 (Div. III, 2001) – April 01:14 Affirmed by the Washington Supreme Court; see below, this topic.

Pro–State rulings on seizure–of–person, search–incident–to–arrest in case involving late–night spotlighting and contacting of man in parked car. State v. O'Neill, 104 Wn. App. 850 (Div. I, 2001) – May 01:20 Reversed by the Washington Supreme Court; see below, this topic.

Holding a person's ID while conducting a warrants check held to be "seizure." State v. Crane, 105 Wn. App. 301 (Div. II, 2001) – June 01:08

Court of Appeals rejects safety–frisk rationale for search, but upholds post–arrest search of nearby car as a search "incident to arrest." State v. Bradley, 105 Wn. App. 30 (Div. I, 2001) – June 01:10

Fourth Amendment permits custodial arrest for all misdemeanors, even if punishable only by a fine; Washington law is probably more restrictive. Atwater v. City of Lago Vista, 532 U.S. 769 (2001) – July 01:18

It is lawful to stop car based on DOL record showing the license of the registered owner is in suspended status, but if further investigation reveals the driver not to be the registered owner, then the detention must end immediately. State v. Penfield, 106 Wn. App. 157 (Div. III, 2001) – Aug 01:12

No "pretext" rule for arrests under Fourth Amendment; but there is almost certainly a "pretext arrest" rule under Washington constitution. Arkansas v. Sullivan, 532 U.S. 769 (2001) – Sept 01:06

Felony stop at gunpoint was not an "arrest" – police use of force was reasonable, so "Terry" seizure tested against "reasonable suspicion" standard. U.S. v. Rousseau, 257 F.3d 925 (9th Cir. 2001) – Sept 01:06

Defendant will try to show that stop by "emphasis patrol" in Columbia Gorge pretextual. State v. Rainey, 107 Wn. App. 129 (Div. III, 2001) – Sept 01:20

Because driver leaned over toward front–seat passenger while officer was making post–stop radio check on driver during 1:15 a.m. traffic stop of driver, passenger was subject to lawful frisk once officer learned and acted on information that driver was subject to custodial arrest. State v. Horrace, 144 Wn.2d 346 (2001) – Oct 01:04

Some light shed on search issues of 1) voluntary abandonment of effects, 2) Mendez–based order to passenger to stay in vehicle, and 3) knowledge element of Parker "search incident" rule regarding non–arrested passenger's effects. State v. Reynolds, 144 Wn.2d 282 (2001) – Oct 01:08

Exclusionary Rule applies where evidence is obtained by other–state officer in Washington arrest which is not expressly authorized by RCW's. State v. Barker, 143 Wn.2d 915 (2001) – Oct 01:11

1st Amendment does not bar warrantless arrest of nude dancers for obscene conduct, but civil case must be retried to determine if their conduct was obscene. Furfaro v. City of Seattle, 144 Wn.2d 363 (2001) – Nov 01:02

It may be ok to routinely ask vehicle passengers for ID, so long as the "request" is not a "demand" (1980 Larson case given narrow reading). State v. Rankin, 108 Wn. App. 948 (Div. I, 2001) – Jan 02:04 Status: Review was pending in the Washington Supreme Court as of December 2003.

To defend officer's stop based on "stolen vehicle" dispatch, prosecutor must establish reliability of WACIC information. State v. O'Cain, 108 Wn. App. 542 (Div. I, 2001) – Jan 02:13

Officers responding to report of armed assault just committed acted reasonably in making felony stop of suspects identified by victim at scene. McKinney v. City of Tukwila, 103 Wn. App. 391 (Div. I, 2000) – Jan 02:14

Terry stop–and–frisk ok where officers suspected open–liquor–container violation in public area, and officers were outnumbered. State v. Bailey, 109 Wn. App. 1 (Div. I, 2001) – Feb 02:04 (LED Ed. Note: But see State v. Duncan entry below, this topic)

Terry v. Ohio "totality of the circumstances" test for "reasonable suspicion" clarified as U.S. Supreme Court criticizes Ninth Circuit's "divide–and–conquer" approach to facts. U.S. v. Arvizu, 122 S.Ct. 744 (2002) – April 02:02

Warrant to arrest felon released pending appeal constitutionally may be based on less than probable cause. State v. Fisher, 145 Wn.2d 209 (2001) – April 02:14

In license revocation proceeding, DOL correctly ruled that radar–based traffic stop was lawful despite lack of foundational evidence regarding reliability of radar. Clement v. DOL, 109 Wn. App. 371 (Div. I, 2001) – April 02:18

No Terry seizures based on mere "reasonable suspicion" are allowed for non–traffic civil infractions. State v. Duncan, 146 Wn.2d 166 (2002) – June 02:17

Custodial arrest for driving while suspended upheld even though officer did not follow local policy by checking with jail before arresting and conducting search incident to arrest; also, suspect's locking his truck after he was arrested did not preclude search–incident of truck. State v. O'Neill, 110 Wn. App. 604 (Div. III, 2002) – June 02:19.

Community caretaking function justified detaining 12–year–old long enough to call his mother; also, follow–up frisk before transport declared to be reasonable. State v. Acrey, 110 Wn. App. 769 (Div. I, 2002) – July 02:16. Affirmed by the Washington Supreme Court; see below, this topic.

Officer had probable cause to arrest for DUI based on totality of circumstances; also, officer's questioning of suspect during stop was not custodial, and hence Miranda warnings were not required. City of College Place v. Staudenmaier, 110 Wn. App. 841 (Div. III, 2002) – July 02:19

Officer's stop of vehicle to check unreadable "trip permit" not justified. State v. Byrd, 110 Wn. App. 259 (Div. I, 2002) – July 02:23

Random consent requests under drug interdiction program on intercity buses in Florida – no Fourth Amendment "seizure" occurred, and consent to search was voluntary, even though officers did not advise of right to not answer questions or of right to refuse consent. U.S. v. Drayton and Brown, 122 S.Ct. 2105 (2002) – Sept 02:02 Comment: Analysis and result likely would differ under Washington Constitution.

Driver's furtive gesture as he pulled over during traffic stop held not to be objectively reasonable justification for "car frisk" where, after hearing driver's explanation for movement, officer left driver in car while doing a radio check, and officer did not check inside car or call for back–up until after driver had successfully completed FST's. State v. Glossbrener, 146 Wn.2d 670 (2002) – Sept 02:07

No "Frye hearing" was necessary to admit evidence re bank robbery tracking device; also, the tracking evidence, plus other facts, justified stop–and–frisk under reasonable suspicion standard of Terry v. Ohio. State v. Vermillion, 112 Wn. App. 844 (Div. I, 2002) – Oct 02:04

Beware if arrestee says: "I'm not the guy on the warrant" – where county jail personnel received reasonable notice that detainee may not be person described in an arrest warrant, county had duty per common law negligence and false imprisonment theories to take reasonably timely steps to verify the identity of the detainee. Stalter v. State, Brooks v. Pierce County, 113 Wn. App. 1 (Div. II, 2002) – Oct 02:13 Status: Review was pending in the Washington Supreme Court as of Dec 2003.

Court rules that there was PC to arrest defendant for using drug paraphernalia; Court also rules that paraphernalia was in "open view." State v. Neeley, 113 Wn. App. 100 (Div. III, 2002) – Nov 02:05

Citizen has no duty to ID himself during Terry stop – despite supporting Nevada statutes, Ninth Circuit holds Nevada officer is not entitled to qualified immunity for arrest based on suspect's failure to identify himself during Terry seizure. Carey v. Nevada Gaming Control Board, 279 F.3d 873 (9th Cir. 2002) – Jan 03:02

Non–pretextual vehicle stop on reasonable suspicion for "severely cracked windshield" held lawful. State v. Wayman–Burks, 114 Wn. App. 109 (Div. III, 2002) – Jan 03:11

Where officers were executing search warrant authorizing arrest of resident on felony warrants, and officers had already made arrest, "protective sweep" of outbuildings was not justified by any other facts. State v. Hopkins, State v. Smith (Russell A.), 113 Wn. App. 954 (Div. III, 2002) – Jan 03:06

State–conceded "seizure" of late–night sleepers in car at Denny's restaurant was not justified by "community caretaking function"; later stop for traffic violation was "fruit" of earlier unlawful "seizure." State v. Cerrillo, 114 Wn. App. 259 (Div. III, 2002) – Jan 03:14

Article: Custodial arrest and search incident to arrest of those arrested for driving while license suspended. March 03:02

Article: Arresting violators who refuse to sign notice of infraction. March 03:06

California officer's observation of possible "lane straddling" was not sufficient to justify car stop for a suspected DUI under "reasonable suspicion" standard. U.S. v. Colin, 314 F.3d 439 (9th Cir. 2002) – March 03:08

DWLS "arrest" under Poulsbo administrative booking policy held "custodial" and "search incident to arrest" therefore upheld. State v. Craig, 115 Wn. App. 191 (Div. II, 2002) – March 03:12

Multiple issues decided: 1) no "seizure" of person occurred in ID request and FIR questioning; 2) "plain view" justified taking "cook spoon" from car; 3) search was not "incident to arrest" because actual arrest did not occur before search; 4) consent was not voluntary where officer stated that he had independent authority to search "incident to arrest"; 5) "inevitable discovery" exception to exclusionary rule not applicable. State v. O'Neill, 148 Wn.2d 564 (2003) – April 03:03

Where 12–year–old was lawfully stopped after midnight in an isolated industrial area, "community caretaking function" held to justify officers in detaining him long enough to phone his mother. State v. Acrey, 148 Wn.2d 738 (2003) – May 03:04

In challenge to officer's basis for arrest, defendant fails to rebut presumption of reliability of DOL report which indicated that defendant had a suspended driver's license. State v. Gaddy, 114 Wn. App. 702 (Div. I, 2002) – June 03:13 Status: Review was pending in the Washington Supreme Court as of December 2003.

State wins on extraterritorial "fresh pursuit" issue. Vance v. DOL, 116 Wn. App. 412 (Div. I, 2003) – June 03:15

"Reasonable suspicion" – DWLS stop upheld based on officer's knowledge gained in contact with suspect four days earlier. State v. Marcum, 116 Wn. App. 526 (Div. III, 2003) – June 03:19

3 a.m. trip from home to police station in boxer shorts was an "arrest;" since police lacked probable cause to arrest, confession may need to be suppressed. Kaupp v. Texas, 123 S.Ct. 1843 (2003) – July 03:19

Court holds to be unlawfully pretextual a traffic stop for lane–change violations where one motive of the officer was to investigate a possible license suspension of the driver. State v. Myers, 117 Wn. App. 93 (Div. III, 2003) – Aug 03:18

Asking driver to step from vehicle to determine source of alcohol smell was ok; also, search of fanny pack was consenting. State v. Mackey, 117 Wn. App. 135 (Div. III, 2003) – Aug 03:20

Civil rights action for unlawful arrest – 2–1 majority holds that Washington officers should have known that citizen can secretly tape record Terry stop conversation; also, under the facts, justification for arrest is limited to that actually relied on by officers at the time of arrest. Alford v. Haner, 333 F.3d 972 (9th Cir. 2003) – Sept 03:06 Note: The State of Washington is seeking review on the second issue in the United States Supreme Court.

Division Three holds: 1) traffic stop was not per se seizure of passengers; 2) order to passenger to get out of car was justified by officer–safety concerns under Mendez; 3) subsequent questioning of passenger was not custodial equivalent of arrest, and therefore no Miranda warnings were required. State v. Rehn, 117 Wn. App. 142 (Div. III, 2003) – Sept 03:12

Arrest by Washington officers on invalid Oregon warrant held unlawful despite fact that the Washington officers did all they could do to confirm the validity of the Oregon warrant. State v. Nall, 117 Wn. App. 647 (Div. II, 2003) – Sept 03:16

Reasonable suspicion of possession of cocaine rocks justified Terry seizure. State v. Jones, 117 Wn. App. 721 (Div. I, 2003) – Sept 03:18

Extended questioning of suspect in driveway on December evening held reasonable under Terry v. Ohio; also, state loses some, wins some, on issues of "harmless error," "fruit of the poisonous tree"/"attenuation", "inevitable discovery," and gun–crime sentencing. State v. McReynolds, 117 Wn. App. 309 (Div. III, 2003) – Oct 03:14

ARSON AND RECKLESS BURNING (Chapter 9A.48 RCW)

State prevails on issues of: 1) no privacy in garbage can at neighboring abandoned house; 2) voluntariness of confession; 3) sufficiency of evidence re meth manufacturing; and 4) sufficiency of evidence re reckless burning. State v. Hepton, 113 Wn. App. 673 (Div. III, 2002) – Feb 03:15

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

No need to prove defendant's knowledge of victim/officer's status in prosecution for third degree assault of law enforcement officer. State v. Brown, 94 Wn. App. 327 (Div. I, 1999) – April 99:09 Affirmed by the Washington Supreme Court; see below, this topic.

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

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

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

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

Prison inmate's homemade paper–and–pencil spear is <u>not</u> a deadly weapon for purposes of second degree assault charge. State v. Skenendore, 99 Wn. App. 494 (Div. II, 2000) – Sept 00:19

Self–defense standard for inmates using force against corrections officers is same as for civilians resisting police arrest: defendant can respond with force only if "actual, imminent danger of serious injury." State v. Bradley, 141 Wn.2d, 731 (2000) – Dec 00:14

Pencil was "deadly weapon" under "assault one" based on totality of circumstances; but Court questions whether jail cellmates are "cohabitants" covered by DV law. State v. Barragan, 102 Wn. App. 754 (Div. III, 2000) – April 01:19

"Immediate area" phrase in drive–by shooting statute held void–for–vagueness as applied to facts where shooting occurred two blocks from transport car. State v. Locklear, 105 Wn. App. 555 (Div. II, 2001) – Nov 01:20 Affirmed by the Washington Supreme Court; see below, this topic.

"Custodial assault": juvenile inmates in juvenile institutions are subject to the same narrow self–defense rule that limits use of force by citizens who resist arrest and that limits adult prisoners who use force against correctional officers in adult facilities. State v. Garcia, 107 Wn. App. 545 (Div. II, 2001) – Jan 02:22

Under "assault one" statute, repeatedly kicking victim in the head can be "force or means likely to produce death or great bodily injury." State v. Pierre, 108 Wn. App. 378 (Div. I, 2001) – Feb 02:23

Drive–by shooting statute – evidence held insufficient to convict because facts involved "walk–by" (not "drive–by") shooting. State v. Locklear, 146 Wn.2d 55 (2002) – Aug 02:03

Pattern of prior assaults on child that was similar to charged assault is held sufficient to support conviction for second degree assault of a child under "pattern or practice" element of the crime. State v. Schlichtmann, 114 Wn. App. 162 (Div. I, 2002) – March 03:18

Jury instructions on meaning of "disfigurement" upheld in assault–two case. State v. Atkinson, 113 Wn. App. 661 (Div. III, 2002) – March 03:20

ATTEMPT (RCW 9A.28.020)

Undercover detective's recording of internet ICQ ("I seek you") communications with suspected child molester held admissible under privacy act based on implied consent by defendant; also, "impossibility" defense rejected because crime charged was attempted rape. State v. Townsend, 147 Wn.2d 666 (2002) – March 03:11

BAIL ISSUANCE, FORFEITURE

Court rule CrRLJ 3.2(a) does not permit "cash only" bail. City of Yakima v. Mollett, 115 Wn. App. 604 (Div. III, 2003) – May 03:18

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

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

BAIL JUMPING (RCW 9A.76.170)

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

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

BARRATRY

"Barratry" charge could not be pursued against pro se defendant who filed "pleading" papers on arresting officers in relation to pending proceedings on DWLS charge. State v. Duffey, 97 Wn. App. 33 (Div. II, 1999) – March 00:17

"Barratry" charge could not be pursued by State against pro se subject of traffic citation who filed "demand for particulars" papers on citing officers. State v. Sullivan, 143 Wn.2d 162 (2001) – Sept 01:11

BIGAMY (RCW 9A.64.010)

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

Wrongful intent held to be an element of bigamy. State v. Seek, 109 Wn. App. 876 (Div. I, 2002) – April 02:17

BRIBERY AND RELATED LAWS

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

BURGLARY (Chapter 9A.52 RCW)

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

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

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

Burglary conviction upheld because defendant either had no permission to enter apartment or exceeded any limited permission he may have received. State v. Gohl, 109 Wn. App. 817 (Div. I, 2001) – March 02:07

Fenced backyard part of "building" under first–degree burglary statute. State v. Wentz, 110 Wn. App. 70 (Div. III. 2002) – April 02:16 Affirmed by the Washington Supreme Court; see below, this topic.

"Indecent exposure" held to be "crime against a person" under burglary statute. State v. Snedden, 112 Wn. App. 122 (Div. III, 2002) – Aug 02:25 Affirmed by the Washington Supreme Court; see below, this topic.

Burglary – To establish "building" status for a "fenced area," the State need not show that a "fenced area" at a residence was used for lodging of persons, carrying on business, or protecting goods. State v. Wentz, 149 Wn.2d 342 (2003) – Sept 03:08

"Indecent exposure" is a "crime against a person" under burglary statute. State v. Snedden, 149 Wn.2d 914 (2003) – Oct 03:04

CITIZEN'S ARREST AND RELATED MATTERS

On totality of circumstances, store security personnel did not violate "shopkeepers' privilege" in holding suspected shoplifter until police arrived. Guijosa, et. al. v. Wal–Mart Stores, Inc., 101 Wn. App. 777 (Div. II, 2000) –Feb 01:21

CIVIL COMMITMENT OF MENTALLY ILL

Officer's reason for seizing mentally ill person is not an element of proof in a civil commitment proceeding under chapter 71.05 RCW. State v. V.B., 104 Wn. App. 953 (Div. II, 2001) – April 01:18

CIVIL LIABILITY

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

Parts of Interpreter Act stricken as improperly adopted. Patrice v. Murphy, 136 Wn. 2d 845 (1998) – Jan 99:10

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

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

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

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

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

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

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

Civil rights suit for Fifth Amendment violation allowed to proceed against officers who, per formal training and widespread practice in Southern California at the time, intentionally ignored custodial invocations of Miranda rights. California Attorneys for Criminal Justice, et. al. v. Butts, et. al., 195 F.3d 1039 (9th Cir. 1999) – Jan 00:03 Note: the United States Supreme Court overruled the 9th Circuit's civil rights analysis under the Fifth Amendment in Chavez v. Martinez; see below, this topic.

Plaintiff's allegation regarding detective's "promise" to submit case to prosecutor created fact question regarding special relationship; lawsuit allowed to proceed under exception to "public duty doctrine." City of Anacortes v. Torres, 97 Wn. App. 64 (Div. I, 1999) – Jan 00:10

No liability for bank or police in check–cashing mixup and arrest. Dang v. Ehredt, 95 Wn. App. 670 (Div. I, 1999) – Feb 00:18

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

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

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

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

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

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

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

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

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

Pointing gun at suspect may be excessive force under Fourth Amendment – lawfulness of gun–pointing by law enforcement officer depends on nature and imminence of threat posed by citizen suspect. Robinson v. Solano County, California, 218 F.3d 1030 (9th Cir. 2000) – Oct 00:10 The Ninth Circuit granted reconsideration and then reaffirmed its "excessive force" ruling. 278 F.3d 1007 (9th Cir. 2002).

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

Staats v. Brown Update — Authority To Arrest For F&W Violations – March 01:03

No qualified civil immunity for shooting emotionally disturbed man with less–than–lethal beanbag round where no clear warning given. Deorle v. Rutherford, 242 F.3d 1119 (9th Cir. 2001) – June 01:05

1st Amendment does not bar warrantless arrest of nude dancers for obscene conduct, but civil case must be retried to determine if their conduct was obscene. Furfaro v. City of Seattle, 144 Wn.2d 363 (2001) – Nov 01:02

Ninth Circuit must reconsider its "excessive force" decision in case involving officers using pepper spray to try to force compliance from mechanically interlocked, civilly disobedient, "passive" resistors. County of Humboldt v. Headwaters Forest Defense, 122 S.Ct. 24 (2001) – Jan 02:02. Note: After the Ninth Circuit again ruled against the County of Humboldt on reconsideration (see 276 F.3d 1125 (9th Cir. 2002)), the County again petitioned for review in the U.S. Supreme Court, and on Nov 4, 2002, the U.S. Supreme Court denied review.

Officers responding to 911 report of armed assault acted reasonably in making felony stop of suspects identified as such by victim at scene. McKinney v. City of Tukwila, 103 Wn. App. 391 (Div. I, 2000) – Jan 02:14

County's 911 operators made no promises that would subject county to civil liability under "special relationship" exception to "public duty" doctrine. Bratton v. Welp, 106 Wn. App. 248 (Div. III, 2001) – Jan 02:15 Reversed by the Washington Supreme Court; see below, this topic.

Court finds "failure to enforce" exception to "public duty doctrine" applies in part in case of attack by allegedly "dangerous dogs." King v. Hutson, 97 Wn. App. 590 (Div. III, 1999) – Jan 02:17

No civil liability in 911 "failure to protect" case because dispatcher promised only that police would respond, and they did. Sinks and Stock v. Russell, 109 Wn. App. 299 (Div. II, 2001) – Feb 02:13

Sgt. McCarthy's win in countersuit is upheld by unpublished Ninth Circuit decision. Cross v. City of Port Orchard (and others), 2001 WL 1609759 – April 02:11

"911" operator's statements to callers raise question of fact such that civil suit must go to trial on "special relationship" exception to "public duty doctrine." Bratton v. Welp, County of Spokane, 105 Wn.2d 572 (Div. III, 2002) – April 02:12

Beware if arrestee says: "I'm not the guy on the warrant" – where county jail personnel received reasonable notice that detainee may not be person described in an arrest warrant, county had duty per common law negligence and false imprisonment theories to take reasonably timely steps to verify the identity of the detainee. Stalter v. State, Brooks v. Pierce County, 113 Wn. App. 1 (Div. II, 2002) – Oct 02:13 Status: Review was pending in the Washington Supreme Court as of December 2003.

Handcuffing inmate for seven hours to hitching post in hot Alabama sun without regular breaks held to be cruel and unusual punishment. Hope v. Pelzer, 122 S.Ct. 2508 (2002) – Nov 02:02

Loss of property due to execution of search warrant and preservation order is not "compensable taking" under article 1, section 16 of Washington State Constitution. Eggleston v. Pierce County, 148 Wn.2d 760 (2003) – May 03:11

Section 1983 civil rights action – officer's violation of Miranda or coercion of suspect's confession does not violate suspect's Fifth Amendment privilege against self–incrimination unless the suspect's statement is used in a criminal prosecution, but some such unlawful questioning may "shock the conscience" and therefore violate Fourteenth Amendment due process protections. Chavez v. Martinez, 123 S.Ct. 1994 (2003) – Sept 03:02

Civil rights action for unlawful arrest – 2–1 majority holds that Washington officers should have known that citizen can secretly tape record Terry stop conversation; also, under the facts, justification for arrest is limited to that actually relied on by officers at the time of arrest. Alford v. Haner, 333 F.3d 972 (9th Cir. 2003) – Sept 03:06 Status: The State of Washington is seeking review on the second issue in the United States Supreme Court.

Tribal sovereignty issues resolved in county's favor in case involving county's execution of search warrant at tribal casino on reservation. Bishop Paiute Tribe v. Inyo County, California, 123 S.Ct. 1887 (2003) – Oct 03:02

Civil rights liability – several-hour detention of non–suspect and unjustified investigation into her citizenship violated Fourth Amendment. Mena v. City of Simi Valley, 322 F.3d 1255 (9th Cir. 2003) – Oct 03:03

Business owner may not pursue lawsuit against City of Seattle and others in case that arose from utilities–cutoff after protestors took over a private building during the fall 1999 WTO conference. Citoli v. City of Seattle, 115 Wn. App. 459 (Div. I, 2003) – Oct 03:16

Prior guilty plea means pleading party cannot later sue for malicious prosecution on the matter that was the subject of the plea. Clark v. Baines, 114 Wn. App. 19 (Div. II, 2002) – Oct 03:21 Status: Review was pending in the Washington Supreme Court as of Dec 2003.

CIVIL SERVICE AND EMPLOYMENT LAW

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

COLLATERAL ESTOPPEL/RES JUDICATA

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

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

DOL administrative hearing judge's earlier determination in administrative proceeding that officer lacked justification for traffic stop does not preclude court from revisiting that question in superior court criminal proceeding. State v. Vasquez, 109 Wn. App. 310 (Div. III, 2001) April 02:19 – Affirmed by the Washington Supreme Court; see next entry, this topic.

Despite prior ruling in implied consent administrative proceeding that a vehicle stop was not justified, state can litigate that same question in a subsequent DUI prosecution (in other words, "collateral estoppel doctrine" does not apply in this context). State v. Vasquez, 148 Wn.2d 303 (2002) – Feb 03:06

COMMUNICATING WITH A MINOR FOR IMMORAL PURPOSES

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

CORPUS DELICTI RULE

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

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

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

Corpus delicti rule does not apply in involuntary commitment, other civil proceedings. State v. M.R.C., 98 Wn. App. 52 (Div. II, 1999) – March 00:16

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

Corpus delicti of manslaughter not established in possible SIDS case. State v. Pineda, 99 Wn. App. 65 (Div. II, 2000) – May 00:20 Note: 2003 legislation modified how corpus delicti rule is to be applied in these and certain other types of cases. See July 03 **LED** at pp.9-10.

Where the only evidence of "delivery" was the heroin seller's confession, the corpus delicti of "delivery of drugs by someone" was not met in fatal heroin O.D. case. State v. Bernal, 109 Wn. App. 150 (Div. II, 2001) – Feb 02:05

Pre–crime statements of defendant help establish corpus delicti of murder. State v. Pietrzak, 110 Wn. App. 670 (Div. III, 2002) – Nov 02:14

Corpus delicti established for taking motor vehicle without permission. State v. C.M.C., 110 Wn. App. 285 (Div. I, 2002) – Nov 02:15

CRIMINAL LIABILITY FOR POLICE CONDUCT

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

CRIMINAL MISTREATMENT (Chapter 9A.42 RCW)

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

No Miranda "custody" where suspect questioned in hospital's "family quiet room"; also, criminal mistreatment evidence sufficient. State v. Rotko; State v. Marks, 116 Wn. App. 230 (Div. II, 2003) – June 03:07

CRUEL AND UNUSUAL PUNISHMENT

Federal constitution's prohibition against "cruel and unusual" punishment does not preclude two consecutive 25 years–to–life sentences under California "three strikes" law for man who committed two petty thefts, each of which qualified separately under California's "three strikes" law as a "third strike." Lockyer v. Andrade, 123 S.Ct. 1166 (2003) – May 03:04

Federal constitution's prohibition against "cruel and unusual" punishment does not preclude 25–years–to–life sentence under California "three strikes" law where "third strike" was felony theft of over $1000 worth of golf clubs. Ewing v. California, 123 S.Ct 1179 (2003) – May 03:04

CURFEW LAWS

City of Sumner juvenile curfew ordinance invalidated for vagueness in violation of federal constitutional due process protections. City of Sumner v. Walsh, 148 Wn.2d 490 (2002) – April 03:14

DEADLY FORCE

Pointing gun at suspect may be excessive force under Fourth Amendment – lawfulness of gun–pointing by law enforcement officer depends on nature and imminence of threat posed by citizen suspect. Robinson v. Solano County, California, 218 F.3d 1030 (9th Cir. 2000) – Oct 00:10 The Ninth Circuit granted reconsideration and then reaffirmed its "excessive force" ruling. 278 F.3d 1007 (2002).

DEFERRED PROSECUTION

Only one deferred prosecution per person per lifetime under RCW 10.05.010; also, no "ex post facto" constitutional violation in 1998 amendment. City of Walla Walla v. Topel, 104 Wn. App. 816 (Div. III, 2001) – Feb 02:23

Only 1 deferred prosecution permitted per lifetime under RCW 10.05.010. State v. Gillenwater, 110 Wn. App. 741 (Div. I, 2002) – Sept 02:21

DOMESTIC VIOLENCE (INCLUDING PROTECTION ORDERS)

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

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

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

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

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

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

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

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

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

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

Act of DV need not be recent to justify permanent DVPA protection order. Spense v. Kaminski, 103 Wn. App. 325 (Div. III, 2000) – March 01:19

Pencil used as weapon was "deadly weapon" under "assault one" based on totality of circumstances; but court questions whether jail cellmates are "cohabitants" covered by DV law. State v. Barragan, 102 Wn. App. 754 (Div. III, 2000) – April 01:19

Article: Possession Of Firearms And Dangerous Weapons By Persons Subject To DV, Other Court Orders – State & Federal Statutes – Sept 01:02

No–contact order issued pre–conviction remains valid post–conviction. State v. Schultz, 106 Wn. App. 328 (Div. I, 2001) – Nov 01:20 Affirmed by the Washington Supreme Court; see below, this topic.

Evidence that defendant phoned home of person protected by no–contact order and talked to protected person's spouse was enough to support conviction for violation of no–contact order. State v. Ward, Baker, 108 Wn. App. 621 (Div. I, 2001) – Feb 02:18 Affirmed by the Washington Supreme Court; see below, this topic.

DV no–contact order entered at arraignment may be extended at time of sentencing. State v. Schultz, 146 Wn.2d 540 (2002) – Sept 02:14

Court may not issue mutual civil anti–harassment orders under chapter 10.14 RCW unless both parties file petitions. Hough v. Stockbridge, 113 Wn. App. 532 (Div. II, 2002) – Nov 02:16 Reversed by the Washington Supreme Court; see below, this topic.

Evidence that man was briefly observed walking with woman protected by no–contact order was sufficient to support his conviction for violating the order. State v. Sisemore, 114 Wn. App. 75 (Div. II, 2002) – Jan 03:16

Evidence that defendant telephoned home of person protected by no–contact order and talked to person's spouse held sufficient to support conviction for violation of order. State v. Ward, 148 Wn.2d 803 (2003) – May 03:10

District court has equitable power enabling court to issue mutual antiharassment protection orders on its own. Hough v. Stockbridge, 150 Wn.2d 234 (2003) – Nov 03:11

DOUBLE JEOPARDY

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

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

No double jeopardy problem in prosecuting Tulalip tribal member (previously convicted in tribal court) in Cowlitz county for illegally hunting there. State v. Moses, 145 Wn.2d 370 (2002) – April 02:15

"Reckless" in vehicular assault statute means driving "in a rash or heedless manner, indifferent to the consequences"; also, double jeopardy protections do not preclude multiple convictions based on multiple victims in a singular vehicular assault incident. State v. Clark, 117 Wn. App. 281 (Div. II, 2003) – Oct 03:13

Extended questioning of suspect in driveway on December evening held reasonable under Terry v. Ohio; also, state loses some, wins some, on issues of "harmless error," "fruit of the poisonous tree"/"attenuation", "inevitable discovery," and gun–crime sentencing. State v. McReynolds, 117 Wn. App. 309 (Div. III, 2003) – Oct 03:14

DUE PROCESS

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

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

Under circumstances of pre–trial competency hearing, defendant did not have a constitutional due process right to cross–examine a child witness in that hearing. State v. Maule, 112 Wn. App. 887 (Div. I, 2002) – Oct 02:25

No due process problem under Connecticut's "Megan's Law" in not giving sex offenders pre–deprivation hearings before putting their names, addresses, pictures and descriptions on the internet. Connecticut Department of Public Safety v. Doe, 123 S.Ct. 1160 (2003) – May 03:03

Texas sodomy law directed at same–gender, consenting adult conduct held unconstitutional because not justified by legitimate state interests. Lawrence v. Texas, 123 S.Ct. 2472 (2003) – Aug 03:05

DOL's sending of license suspension notice to address shown on most recent traffic ticket meets constitutional due process (notice) requirement. City of Redmond v. Arroyo–Murillo, 149 Wn.2d 607 (2003) – Aug 03:11

DURESS (RCW 9A.16.060)

Duress is not available as a defense to a charge of attempted murder. State v. Mannering, 112 Wn. App. 268 (Div. II, 2002) – Sept 02:14

ELECTRONIC SURVEILLANCE (Chapter 9.73 RCW)

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

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

Where Tacoma police supervisor authorized section 230 intercept and recording under chapter 9.73, it was lawful for authorized officers in Tacoma to intercept and record call that suspect placed from Sumner to Tacoma. State v. Matthews, 101 Wn. App. 894 (Div. II, 2000) – Oct 00:18

Detective lawfully tricks defendant into e–mail, ICQ exchange with fictitious child: RCW 9.73 challenge rejected and attempted rape–of–child conviction upheld. State v. Townsend, 105 Wn. App. 622 (Div. III, 2001) – June 01:21 Affirmed by the Washington Supreme Court; see below, this topic.

Undercover detective's recording of internet ICQ ("I seek you") communications with suspected child molester held admissible under privacy act based on implied consent by defendant; also, "impossibility" defense rejected because crime charged was attempted rape. State v. Townsend, 147 Wn.2d 666 (2002) – March 03:11

Civil rights action for unlawful arrest – 2–1 majority holds that Washington officers should have known that citizen can secretly tape record Terry stop conversation; also, under the facts, justification for arrest is limited to that actually relied on by officers at the time of arrest. Alford v. Haner, 333 F.3d 972 (9th Cir. 2003) – Sept 03:06 Status: The State of Washington is seeking review on the second issue in the United States Supreme Court.

ENTRAPMENT (RCW 9A.16.070)

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

EQUAL PROTECTION

Firearm sentencing statute violates constitutional equal protection standard in enhancing penalty for short–barreled shotguns, but not for machine guns; but Court also holds that an unloaded firearm is still a firearm. State v. Berrier, 110 Wn. App. 639 (Div. II, 2002) – Sept 02:16

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

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

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

Felony–probationer who ran following his arrest on a probation–violation warrant committed first degree escape under RCW 9A.76.110. State v. Walls, 106 Wn. App. 792 (Div. III, 2001) – Feb 02:09

Leaving holding cell without permission was not "escape two" where defendant was being held there for a reason other than an arrest for an offense. State v. Hendrix, 109 Wn. App. 622 (2001) – March 02:13

Failure to report to drug treatment program held to be "escape." State v. Breshon, 115 Wn. App. 874 (Div. II, 2003) – May 03:23

EVIDENCE LAW

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Where charges were possession of drug paraphernalia and possession of marijuana, defendant entitled to put on evidence of his reputation for not using drugs. State v. Day, 142 Wn.2d 1 (2000) **–** Jan 01:03

No error in trial court's minor restriction on defense attorney's questions about officer's surveillance location. State v. Darden, 103 Wn. App. 368 (Div. I, 2000) – March 01:20 Reversed by the Washington Supreme Court; see below, this topic.

"Excited utterance" and "medical diagnosis" hearsay–exception rulings for State. State v. Woods, 143 Wn.2d 658 (2001) – Sept 01:08

Court rules inappropriate for jury consideration that part of a tape–recording of interrogation containing officers' statements to the suspect that they thought he was lying. State v. Demery, 144 Wn.2d 753 (2001) – Dec 01:15

Toxicologist's report not admissible in drug case, because report failed to name person from whom drugs were obtained by toxicologist. State v. Neal, 144 Wn.2d 600 (2001) — Dec 01:17

Confrontation clause not violated by admission of hearsay under child sexual abuse law (RCW 9A.44.120) and under "medical diagnosis" exception (ER 803(a)(4)). State v. Kilgore, 107 Wn. App. 160 (Div. II, 2001) – Feb 02:15

Hearsay not admissible under RCW 9A.44.120 where child did not understand difference between lie and truth at time she made out–of–court statement. State v. C.J., 108 Wn. App. 790 (Div. III, 2001) – Feb 02:18

State's "surveillance location privilege" argument rejected. State v. Darden, 145 Wn.2d 612 (2002) – May 02:08

"Excited utterance" hearsay exception met where rape victim reported rape to boyfriend, despite the fact that she was for a brief period thereafter reluctant to go to the police with her report. State v. Lawrence, 108 Wn. App. 226 (Div. I, 2001) – Aug 02:18

State wins on "excited utterance" and "photo montage" issues in case where officer was shot during a traffic stop, and officer was later interviewed and asked to review montage. State v. Ramires, 109 Wn. App. 749 (Div. III, 2002) – Aug 02:20

No "Frye hearing" was necessary to admit evidence re bank robbery tracking device; also, the tracking evidence, plus other facts, justified stop–and–frisk under reasonable suspicion standard of Terry v. Ohio. State v. Vermillion, 112 Wn. App. 844 (Div. I, 2002) – Oct 02:04

Under circumstances of pre–trial competency hearing, defendant did not have a due process right to cross–examine a child witness in that hearing. State v. Maule, 112 Wn. App. 887 (Div. I, 2002) – Oct 02:25

Because blood tests were performed in Oregon, the law of Oregon controls on evidentiary privilege question; also, defendant loses due process argument regarding failure to preserve blood. State v. Donahue, 105 Wn. App. 67 (Div. II, 2001) – Nov 02:18

Officer's testimony commenting on defendant's pre–trial exercise of his right to silence held to require reversal of conviction. State v. Romero, 113 Wn. App. 779 (Div. III, 2002) – Jan 03:17

Hearsay from assault defendant's spouse held admissible because it meets ER 804(b)(3) hearsay exception for "statement against interest" and meets Sixth Amendment confrontation clause test for reliability. State v. Crawford, 147 Wn.2d 424 (2002) – Feb 03:09

Before finding that frightened child rape victim was "unavailable" to testify under child–hearsay statute, trial court should have considered use of closed circuit TV. State v. Smith, 148 Wn.2d 122 (2002) – April 03:17

Evidence regarding 911 audio tape meets authentication and "excited utterance" admissibility requirements. State v. Jackson, 113 Wn. App. 762 (Div. II, 2002) – April 03:18

Test met for "dying declaration" hearsay exception. State v. Johnson, 113 Wn. App. 482 (Div. I, 2002) – April 03:22

Child victim hearsay statute receives pro–prosecution interpretation – state need not show that child was competent to testify at the time that child made hearsay statement. State v. C.J., 148 Wn.2d 672 (2003) – May 03:09

Written statement that witness gave to investigating officer could not be considered as substantive evidence because it was not made under oath or under penalty of perjury. State v. Sua, 115 Wn. App. 29 (Div. II, 2003) – May 03:20

Unsworn written statement that a DV victim gave to police held admissible as "past recorded recollection" hearsay under ER 803(a)(5) where she testified at trial and denied any memory of statement or incident. State v. Derouin, 116 Wn. App. 38 (Div. I, 2003) – May 03:21

In conspiracy case involving pawnshop owner and home–invasion robbers, court addresses issues of: (1) knowledge element of accomplice liability; (2) admissibility of co–conspirator hearsay; (3) tolling of statute of limitations for persons out of state; and (4) scope of restitution in conspiracy cases. State v. King, 113 Wn. App. 243 (Div. I, 2002) – July 03:21

Where defendant does not raise as a question at trial his identity as the "perpetrator", evidence of defendant's prior sex crime may be admitted as reflecting a "common scheme or plan" in some circumstances where the prior sex crime does not have a unique or signature "MO." State v. DeVincentis, 150 Wn.2d 11 – Oct 03:05

"Rape shield" law at RCW 9A.44.020 does not excuse defense attorney's failure to effectively defend client – attorney should have impeached an alleged child rape victim's testimony with evidence of regarding her history of having other sexual partners. State v. Horton, 116 Wn. App. 909 (Div. II, 2003) – Oct 03:20

Officer's testimony that he did not believe defendant's story was improperly admitted into evidence. State v. Jones, 117 Wn. App. 89 (Div. II, 2003) – Oct 03:21

Expert testimony matching sample of dog DNA to specific dog should not have been admitted because current science does not support reliability. State v. Leuluaialii, 118 Wn. App. 780 (Div. I, 2003) – Dec 03:23

EXCLUSIONARY RULE (Including "inevitable discovery" exception)

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

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

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

EX POST FACTO LIMITS ON LAW

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

No "ex post facto" problem under Alaska's "Megan's Law" in putting sex offenders' names, photos, descriptions and addresses on internet. Smith v. Doe, 123 S.Ct. 1140 (2003) – May 03:03

Ex post facto constitutional defect found in California law that permitted prosecution for child sex abuse even though prior statute–of–limitations period had expired. Stogner v. California, 123 S.Ct. 2446 (2003) – Aug 03:05

EXTORTION (RCW 9A.56.110–130)

Part of extortion statute struck down on free speech grounds. State v. Pauling, 108 Wn. App. 445 (Div. I, 2001) – Dec 01:20 Reversed by the Washington Supreme Court; see below, this topic.

Former extortion–two statute is given a limiting interpretation so that it does not unconstitutionally violate First Amendment free speech protections. State v. Pauling, 149 Wn.2d 381 (2003) – Aug 03:10 Note: 2002 legislative amendment modified the relevant statutory provisions. See June 02 **LED**:03.

FIREARMS LAWS (Chapter 9.41 RCW) AND OTHER WEAPONS LAWS

Article – Federal Brady law's instant check system takes effect. Jan 99:19

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

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

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

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

Felon who left gun in car for 3 days "used" the car to commit felony possession of gun, and hence driver's license revocation was required. State v. Batten, 95 Wn. App. 127 (Div. II, 1999) – Nov 99:17 Affirmed by the Washington Supreme Court; see below, this topic.

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

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

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

Defendants in cases in two divisions of the Court of Appeals lose arguments that their firearms rights were automatically restored on parole release. Forster v. Pierce County, 99 Wn. App. 168 (Div. II, 2000) and State v. Radan, 98 Wn. App. 652 (Div. III, 1999) – March 00:13 The Forster decision was not further reviewed, but the Radan case was reversed by the Washington Supreme Court; see below, this topic.

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

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

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

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

No ex post facto problem with 1994 amendments to chapter 9.41 RCW making rifles and shotguns off limits to felons. State v. Schmidt, 100 Wn. App. 297 (Div. II, 2000) – July 00:16 Affirmed by the Washington Supreme Court; see below, this topic.

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

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

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

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

Evidence sufficient to convict for 1) "obstructing" and 2) "unlawful possession of firearm" (the latter prosecution was based on "constructive possession" rationale). State v. Turner, 103 Wn. App. 515 (Div. II, 2000) – March 01:11

Montana law automatically restoring gun rights in Montana did not restore felon's Washington gun rights, but "early discharge" certificate constituted procedure finding "rehabilitation" per RCW 9.41.040(3). State v. Radan, 143 Wn.2d 323 (2001) – June 01:06

Presence of some of defendant's personal effects in bedroom not enough to establish his "constructive possession" of a gun found there. State v. Alvarez, 105 Wn. App. 215 (Div. III, 2001) – June 01:17

Article: Possession Of Firearms And Dangerous Weapons By Persons Subject To DV, Other Court Orders – State & Federal Statutes – Sept 01:02

No ex post facto constitutional violation in Washington Legislature's 1994 and 1996 amendments expanding gun law restrictions for those with conviction records. State v. Schmidt, State v. Ayers, 143 Wn.2d 658 (2001) – Sept 01:08

Trial court's failure in 1998 sentencing proceeding to warn defendant of firearms possession bar, plus other facts, preclude his conviction under RCW 9.41.040 for unlawful firearms possession – Court of Appeals rules that defendant was misled. State v. Leavitt, 107 Wn. App. 361 (Div. II, 2001) – Nov 01:17

Court rejects constitutional challenges to conviction for unlawful possession of firearms in violation of RCW 9.41.040. State v. Krzeszowski, 106 Wn. App. 638 (Div. I, 2001) – Nov 01:18

Under RCW 9.41.040 (3), there could be no restoration of gun rights on 1975 robbery conviction despite 1984 dismissal of case under RCW 9.95.240. Nakatani v. State, 109 Wn. App. 622 (Div. I, 2001) – March 02:10

Knowledge of presence of gun is not an element of CPL law at RCW 9.41.050. Seattle v. Briggs, 109 Wn. App. 484 (Div. I, 2002) – Aug 02:21

Felon in possession of rifle not allowed to argue he was misled by CCO's advice that he could have rifle, because he had subsequently been warned by police to the contrary. State v. Locati, 111 Wn. App. 222 (Div. III, 2002) – Aug 02:21

Firearm sentencing statute violates equal protection in enhancing penalty for short–barreled shotguns, but not for machine guns; but an unloaded firearm is still a firearm. State v. Berrier, 110 Wn. App. 639 (Div. II, 2002) – Sept 02:16

Attorney General Opinion – AGO 2002 No. 4 Addresses Some Aspects Of The Meaning Of "Conviction" Under RCW 9.41.040 – LED Provides Clarification On One Point – Sept 02:22

"Armed with a deadly weapon at the time of commission of the crime" sentencing provision receives conflicting interpretations in split decision favoring the state. State v. Schelin, 147 Wn.2d 562 (2002) – Feb 03:07

Federal courts cannot restore federal firearms rights where congressional appropriation bars BATF from doing so. U.S. v. Bean, 123 S.Ct. 584 (2002) – March 03:07

Possession of firearms at time person commits or is arrested for felony justifies forfeiture of firearms under RCW 9.41.098(1)(d). State v. Cramm, 114 Wn. App. 170 (Div. I, 2002) – March 03:17

Person convicted of Class A sex offense may not petition for restoration of firearms rights even if he has no prior convictions. State v. Graham, 116 Wn. App. 185 (Div. II, 2003) – May 03:15

Courts have no discretion to not restore gun rights if petitioner satisfies elements of RCW 9.41.040(4). State v. Swanson, 116 Wn. App. 67 (Div. II, 2003) – May 03:17

Under RCW 9.41.040, Washington conviction of indecent liberties bars possession of firearms for life unless governor pardons or annuls. Smith v. State, 118 Wn. App. 464 (Div. III, 2003) - Nov 03:16

FIREWORKS AND EXPLOSIVES LAW (Chapter 70.74 RCW)

"Fireworks" exception in Explosives Act given narrow interpretation. State v. Yokley, 91 Wn. App. 773 (Div. I, 1998) – Feb 99:19 Affirmed by the Washington Supreme Court; see below, this topic.

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

State cannot convict for possessing explosives or attempted possession thereof despite: 1) defendant's possession of empty gas can and bottle stuffed with gauze; plus 2) his admission re intent to make and use Molotov cocktail. State v. Wiggins, 113 Wn. App. 209 (Div. III, 2002) – Nov 02:17

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

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

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

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

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

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

Conclusive presumption for bag–limit violations in Fish & Wildlife statute prohibiting "commercial fishing without a license" held unconstitutional. State v. Mertens, 109 Wn. App. 291 (Div. II, 2001) – Feb 02:14. Status: Review is pending in the Washington Supreme Court. Reversed by the Washington Supreme Court; see below, this topic.

Strict liability applied where prosecution under former commercial fishing statute was based upon possession of more than three times the personal bag limit of geoducks. State v. Mertens, 148 Wn.2d 820 (2003) – May 03:11 NOTE: The statute addressed in this case was amended in 2002. See **June 02 LED** at pages 4–5.

Staats v. Brown Update — Authority To Arrest For F&W Violations – March 01:03

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

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

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

Ninth Circuit must reconsider its excessive force decision in case involving officers using pepper spray to try to force compliance from mechanically interlocked, civilly disobedient, "passive" resistors. County of Humboldt v. Headwaters Forest Defense, 122 S.Ct. 24 (2001) – Jan 02:02. Note: After the Ninth Circuit again ruled against the County of Humboldt on reconsideration (see 276 F.3d 1125 (9th Cir. 2002)), the County again petitioned for review in the U.S. Supreme Court, and on Nov 4, 2002, the U.S. Supreme Court denied review.

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

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

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

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

Civil asset forfeiture hearing, delayed to accommodate related criminal trial, held to be timely under UCSA; also, PC test met; and wife's "innocent owner" defense rejected. Escamilla v. Tri–City Metro Drug Task Force, 100 Wn. App. 742 (Div. III, 2000) – Jan 01:15

Forfeiture hearing was timely, but $58,300 cash in girlfriend's car was not subject to forfeiture under RCW 69.50.505, because there was no PC as to illegal–drugs connection (drug–sniffing dog's alert to cash must be discounted on this record). Valerio v. Lacey Police Department, 110 Wn. App. 163 (Div. II, 2002) – May 02:12

FORGERY (RCW 9A.60.020)

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

Signing a fictitious name to a charge slip without authorization from the account holder is "forgery" under RCW 9A.60.020. State v. Daniels, 106 Wn. App. 571 (Div. I, 2001) – Feb 02:11

Driver who signed a false name on a traffic citation committed forgery. State v. Richards, 109 Wn. App. 648 (Div. II, 2001) – March 02:08

In counterfeit currency case, "intent to defraud" is held to mean same thing as "intent to injure" in forgery statute, RCW 9A.64.020. State v. Simmons, 113 Wn. App. 29 (Div. II, 2002) – Oct 02:24

FREEDOM OF ASSOCIATION (FIRST AMENDMENT)

Despite form as nonprofit private club, adult entertainment facility was in fact a "commercial premises" constitutionally subject to city ordinance. City of Shoreline v. Club for Free Speech Rights, 109 Wn. App. 696 (Div. I, 2001) – March 02:19

FREEDOM OF SPEECH (FIRST AMENDMENT)

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

Word "profane" in Bellevue phone harassment ordinance not unconstitutional. Bellevue v. Lorang, 92 Wn. App. 186 (Div. I, 1998) – April 99:14 Reversed by the Washington Supreme Court; see below, this topic.

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

First Amendment bars warrantless arrest of self–touching nude dancers. Furfaro v. City of Seattle, 97 Wn. App. 537 (Div. I, 1999) – March 00:15 Reversed by the Washington Supreme Court; see below, this topic.

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

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

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

Public disclosure of abortion providers' names and addresses – through posters and on the internet – protected by First Amendment. Planned Parenthood of the Columbia/Willamette Inc. v. American Coalition of Life Activists, 244 F.3d 1007 (9th Cir. 2001) – May 01:02 (rehearing en banc granted) Note: The 3-judge panel's decision that was addressed in the May 2001 **LED** was reversed by an en bank (11 judge) Ninth Circuit panel in an opinion reported at 290 F.3d 1058 (9th Cir. 2002). The en banc decision was not addressed in the **LED**.

1st Amendment does not bar warrantless arrest of nude dancers for obscene conduct, but civil case must be retried to determine if their conduct was obscene. Furfaro v. City of Seattle, 144 Wn.2d 363 (2001) – Nov 01:02

Part of extortion statute struck down on free speech grounds. State v. Pauling, 108 Wn. App. 445 (Div. I, 2001) – Dec 01:20 Affirmed by the Washington Supreme Court; see below, this topic.

Federal statute banning virtual child pornography held to be overbroad in violation of free speech protection of the Federal constitution. Ashcroft v. The Free Speech Coalition, 122 S.Ct. 1389 (2002) – June 02:17

Ordinance of Ohio village requiring non–commercial door–to–door solicitors and canvassers to obtain, carry, and show–on–resident's–demand a solicitor's permit held to violate First Amendment. Watchtower Bible and Tract Society of New York, Inc., v. Village of Stratton (Ohio), 122 S.Ct. 2080 (2002) – Sept 02:07

Seattle ordinance barring posting of notices on city–owned property, including utility poles, held overbroad in violation of state constitution's free speech clause. Seattle v. Mighty Movers, 112 Wn. App. 904 (Div. I, 2002) – Oct 02:23 Status: Review was pending in the Washington Supreme Court as of December 2003.

Virginia's cross–burning statute partially stricken, partially validated in "free speech" challenge. Virginia v. Black, 123 S.Ct. 1536 (2003) – Aug 03:04

Former extortion–two statute is given a limiting interpretation so that it does not unconstitutionally violate first amendment free speech protections. State v. Pauling, 149, Wn.2d 381 (2003) – Aug 03:10 Note: The 2002 Legislature amended the pertinent statute. See **June 02 LED:03.**

Adult cabaret ordinance held constitutional in free speech, voidness attack. Heesan Corporation v. City of Lakewood, 118 Wn. App. 341 (Div. II. 2003) – Dec 03:23

"GIFT OF PUBLIC FUNDS" PROHIBITION

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

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

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

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

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

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

Fourth prong of harassment statute is not vague or overbroad. State v. Williams, 98 Wn. App. 765 (Div. I, 2000) – July 00:13 Reversed by the Washington Supreme Court; see below, this topic.

Mental state element of harassment statute at chapter 9A.46 RCW gets pro–state interpretation in middle school indirect threats case. State v. J.M., 101 Wn. App. 706 (Div. I, 2000) – Nov 00:14 Affirmed by the Washington Supreme Court; see below, this topic.

Term, "mental health," in criminal harassment statute held unconstitutional. State v. Williams, 144 Wn.2d 197 (2001) – Sept 01:10

"Harassment" does not contain element of defendant's knowledge that threat will be communicated to proposed victim; Court also explains what constitutes a "threat" under "harassment" statute. State v. J.M., 144 Wn.2d 472 (2001) – Dec 01:16

Evidence held sufficient to prosecute for telephone harassment. State v. Lansdowne, 118 Wn. App. 882 (Div. III, 2002) – Aug 02:15

Court may not issue mutual civil antiharassment orders under chapter 10.14 RCW unless both parties file petitions. Hough v. Stockbridge, 113. App. 532 (Div. II, 2002) – Nov 02:16 Reversed by Washington Supreme Court, see below, this topic.

Threat–to–kill felony harassment evidence held sufficient to support conviction even though target did not fear death. State v. C.G., 114 Wn. App. 101 (Div. I, 2002) – Jan 03:18 Reversed by the Washington Supreme Court in a decision issued December 11, 2003 to be addressed in the Feb 2004 **LED**.

Felony harassment conviction of juvenile who threatened at school to "do like Columbine" upheld against his free speech and statute–based challenges. State v. E.J.Y., 113 Wn. App. 940 (Div. I, 2002) – Jan 03:20

District court has equitable power enabling court to issue mutual antiharassment protection orders on its own. Hough v. Stockbridge, 150 Wn.2d 234 (2003) – Nov 03:11

IDENTITY THEFT (RCW 9.35.020)

"Identity theft" evidence held sufficient to support conviction. State v. Baldwin, 111 Wn. App. 631 (Div. I, 2002) – Nov 02:12

IMPLIED CONSENT, BREATH AND BLOOD TESTS FOR ALCOHOL, DRUGS (RCW 46.20.308)

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

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

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

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

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

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

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

Interference reading on BAC machine does not justify blood test under implied consent statute. Kent v. Beigh, 102 Wn. App. 269 (Div. I, 2000) – Jan 01:14; Reversed by the Washington Supreme Court; see below, this topic.

Post–traffic–arrest warnings requirement of "implied consent" statute not triggered where no probable cause as to DUI; hence, consenting blood test admissible despite officers' failure to give implied consent warnings. State v. Avery, 103 Wn. App. 527 (Div. II, 2000) – Feb 01:18

Note: Correction Note Regarding Possible Admissibility Of PBT Results – March 01:21

Implied consent statute held to permit blood testing beyond the circumstances listed in subsection (3) of RCW 46.20.308, but Supreme Court holds that repeat BAC reading of "interference detected" is not "physical incapacity" under current WAC rules. City of Kent v. Beigh, 145 Wn.2d 33 (2001) – Dec 01:14

Under–age drinking driver loses challenges to: (1) sworn report of DUI breath test, and (2) advisement as to reason for arrest. DOL v. Grewal, 108 Wn. App. 815 (Div. I, 2001) – Jan 02:22

In license revocation proceeding, DOL may hold that radar–based traffic stop was lawful despite lack of foundational evidence regarding reliability of radar. Clement v. DOL, 109 Wn. App. 371 (Div. I, 2001) – April 02:18

Driver was subject to blood–testing under implied consent statute where he: 1) failed FST's, 2) blew under .07 on breath test, and 3) admitted recently taking prescribed amitriptyline. State v. Baldwin, 109 Wn. App. 516 (Div. III, 2001) – Sept 02:18

For blood alcohol test result to be admissible, blood sample must be shown to have been preserved with enzyme poison. State v. Bosio, 107 Wn. App. 462 (Div. III, 2001) – Sept 02:19

Warning on WSP's implied consent form survives challenge to its (1) "in violation of" language and (2) explanation of criminal sanction. Pattison v. DOL, 112 Wn. App. 670 (Div. I, 2002) – Oct 02:23

Non–cooperation with breath testing held to constitute "refusal" under implied consent law; court also holds that there is no enforceable right to an attorney in implied consent administrative hearings. Ball v. DOL, 113 Wn. App. 193 (Div. II, 2002) – Nov 02:09

Supreme Court validates its own rules that require warning of right to counsel immediately following custodial arrest, regardless of Miranda applicability; but violation of rule through improperly worded warning is held harmless under facts of cases at issue because not prejudicial. State v. Templeton, 148 Wn.2d 193 (2002) – Feb 03:03

Actual temperature of simulator solution need not be proven in order to meet WAC rule's foundational requirement for admissibility of breath test results. City of Seattle v. Allison, 148 Wn.2d 75 (2002) – Feb 03:03

Despite prior ruling in implied consent administrative proceeding that a vehicle stop was not justified, state can litigate that same question in a subsequent DUI prosecution (in other words, "collateral estoppel doctrine" does not apply in this context). State v. Vasquez, 148 Wn.2d 303 (2002) – Feb 03:06

IMPOSSIBILITY DEFENSE

Undercover detective's recording of internet ICQ ("I seek you") communications with suspected child molester held admissible under privacy act based on implied consent by defendant; also, "impossibility" defense rejected because crime charged was attempted rape. State v. Townsend, 147 Wn.2d 666 (2002) – March 03:11

INCEST (RCW 9A.64.020)

Sexual contact with one's natural child is "incest" even if one had previously relinquished parental rights to facilitate child's adoption. State v. Hall, 112 Wn. App. 164 (Div. II, 2002) – Sept 02:14

INDECENT EXPOSURE (RCW 9A.88.010)

"Indecent exposure" is a "crime against a person" under burglary statute. State v. Snedden, 149 Wn.2d 914 (2003) – Oct 03:04

INDIANS (NATIVE AMERICANS) AND LAW ENFORCEMENT

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

County sheriff's office had no jurisdiction to execute search warrant for tribal government records relating to tribal employee. Bishop Paiute Tribe v. County of Inyo, 275 F.3d 893 (9th Cir. 2002) – April 02:10 Reversed by United States Supreme Court; see below, this topic.

No double jeopardy problem in prosecuting Tulalip tribal member (previously convicted in tribal court) in Cowlitz county for illegally hunting there. State v. Moses, 145 Wn.2d 370 (2002) – April 02:15

Tribal sovereignty issues resolved in county's favor in case involving county's execution of search warrant at tribal casino on reservation. Bishop Paiute Tribe v. Inyo County, California, 123 S.Ct. 1887 (2003) – Oct 03:02

INFANCY DEFENSE (RCW 9A.04.050)

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

INITIATIVE–GATHERING RIGHTS

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

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

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

Insanity instructions in "deific decree" case held sufficient even though the instructions did not define "right" and "wrong". State v. Applin, 116 Wn. App. 818 (Div. I, 2003) – Oct 03:18

INSURANCE

Tenant's operation of meth lab in rental house was "vandalism" covered under the landlord's insurance policy. Graff v. Allstate Insurance Company, 113 Wn. App. 799 (Div. II, 2002) – Jan 03:22

INTERROGATIONS AND CONFESSIONS (See also "Sixth Amendment and Related Court Rule Protections")

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

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

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

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

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

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

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

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

Civil rights suit for Fifth Amendment violation allowed to proceed against officers who, per formal training and widespread practice in Southern California at the time, intentionally ignored custodial invocations of Miranda rights. California Attorneys for Criminal Justice v. Butts, 195 F.3d 1039 (9th Cir. 1999) – Jan 00:03 Note: The United States Supreme Court overruled the 9th Circuit's civil rights analysis under the Fifth Amendment in Chavez v. Martinez; see below, this topic.

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

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

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

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

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

Edwards v. Arizona's Fifth Amendment "initiation of contact" bar is lifted as soon as suspect is meaningfully released from continuous custody. State v. Jones, 102 Wn. App. 89 (Div. II, 2000) – Oct 00:16

Sixth Amendment right to counsel – including its post–arraignment, "initiation–of–contact" bar – does not extend to other crimes, even to closely related crimes. Texas v. Cobb, 532 U.S. 162 (2001) – June 01:02 Affirmed by the Washington Supreme Court; see below, this topic.

For BAC test on DUI arrestee to be admissible, a prior warning of the right to counsel under CrR 3.1 or CrRLJ 3.1 must advise of right to counsel "at this time." State v. Templeton, 107 Wn. App. 144 (Div. I, 2001) – Sept 01:12

No Sixth Amendment violation by officers in taking uncounseled statement from represented defendant on charged matter, because defendant was the person who initiated the contact. State v. Erickson, 108 Wn. App. 732 (Div. III, 2001) Dec 01:17

"Public safety" exception to Miranda warnings requirement not met where officer's pre–frisk question to suspect did not mention a safety concern. State v. Spotted Elk, 109 Wn. App. 253 (Div. III, 2001) – Feb 02:07

Prosecutor erred by asking officer to testify as to what attorney–invoking defendant had said when Mirandized. State v. Curtis, 110 Wn. App. 6 (Div. III, 2002) – April 02:20

Officer had probable cause to arrest for DUI based on totality of circumstances; also, officer's questioning of suspect during stop was not custodial, and hence, even if officer had probable cause to arrest suspect during such questioning, Miranda warnings were not required. City of College Place v. Staudenmaier, 110 Wn. App. 841 (Div. III, 2002) – July 02:19

Supreme Court validates its own rules that require warning of right to counsel immediately following custodial arrest, regardless of Miranda applicability; but violation of rule through improperly worded warning is held harmless under facts of cases at issue because not prejudicial. State v. Templeton, 148 Wn.2d 193 (2002) – Feb 03:03

Non–commissioned city security guards investigating marijuana smokers held to be "state actors" required to give Miranda warnings; also, circumstances of questioning held to be "custodial arrest" equivalent. State v. Heritage, 114 Wn. App. 591 (Div. III, 2002) – Feb 03:10 Status: Review was pending in the Washington Supreme Court as of December 2003.

State prevails on issues of: 1) no privacy in garbage can at neighboring abandoned house; 2) voluntariness of confession; 3) sufficiency of evidence re meth manufacturing; and 4) sufficiency of evidence re reckless burning. State v. Hepton, 113 Wn. App. 673 (Div. III, 2002) – Feb 03:15

No "custody" for purposes of Miranda warnings requirement where questioning occurred during Terry stop of suspected car thief. State v. Cunningham, 116 Wn. App. 219 (Div. III, 2003) – June 03:05

No Miranda "custody" where suspect questioned in hospital's "family quiet room"; also, criminal mistreatment evidence sufficient. State v. Rotko; State v. Marks, 116 Wn. App. 230 (Div. II, 2003) – June 03:07

Where officer decided during unMirandized interrogation that officer was not going to allow suspect to leave, but officer did not communicate his decision to suspect, officer's uncommunicated decision was not relevant to "custody" issue; also, totality of circumstances did not add up to custody. State v. Solomon, 114 Wn. App. 781 (Div. III, 2002) – June 03:10

Section 1983 civil rights action – officer's violation of Miranda or coercion of suspect's confession does not violate suspect's Fifth Amendment privilege against self–incrimination unless the suspect's statement is used in a criminal prosecution, but some such unlawful questioning may "shock the conscience" and therefore violate Fourteenth Amendment due process protections. Chavez v. Martinez, 123 S.Ct. 1994 (2003) – Sept 03:02

Division Three holds: 1) traffic stop was not per se seizure of passengers; 2) order to passenger to get out of car was justified by officer–safety concerns under Mendez; 3) subsequent questioning of passenger was not custodial equivalent of arrest, and therefore no Miranda warnings were required. State v. Rehn, 117 Wn. App. 142 (Div. III, 2003) – Sept 03:12

Even if initial, pre–Mirandized questioning violated Miranda, subsequent Mirandized interrogation results were admissible. State v. Reed, 116 Wn. App. 418 (Div. III, 2003) – Sept. 03:19

During custodial interrogation, right to silence can be asserted by continuing silence in the face of persistent questioning for extended time, but facts of case do not support theory. State v. Hodges, 118 Wn. App. 668 (Div. I, 2003) – Dec 03:16

Murder suspect's statements to detectives held to be voluntary. State v. Hughes, 118 Wn. App. 713 (Div. II, 2003) – Dec 03:20

INTIMIDATING A JUDGE (RCW 9A.72.160)

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

Conditional "gun locker time" statement to counselor held admissible and sufficient to support conviction for "intimidating a judge." State v. Side, 105 Wn. App. 787 (Div. III, 2001) – June 01:19

INTIMIDATING A WITNESS (RCW 9A.72.110)

Intimidating a witness – only indirect "threats" need be proved, even if defendant did not intend that the "threats" be communicated to the "target." State v. Anderson, 111 Wn. App. 317 (Div. III, 2002) – Aug 02:12

INTIMIDATION LAWS RE SCHOOL PERSONNEL (Title 28A RCW)

K–12 schools intimidation statute, RCW 28A.635.100, gets pro–State interpretation. State v. Avila, 102 Wn. App. 882 (Div. III, 2000) – Jan 01:13

INTOXICATION DEFENSE

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

JAIL OPERATION

Washington Attorney General Opinion Addresses Code Cities Contracting With Nongovernmental Entities Re Jails – Jan 01:22

JURISDICTION (CRIMINAL)

U.S.–Canadian border, not 49th parallel, controls criminal jurisdiction in Washington. State v. Norman, 145 Wn.2d 578 (2002) – Aug 02:05

Criminal jurisdiction in Washington: while incarcerated, with the help of others located in Washington, Alaska prisoner committed Washington crime of theft of federal disability benefits. State v. Leffingwell, 106 Wn. App. 835 (Div. II, 2001) – Sept 02:15

JUVENILE LAW

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

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

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

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

"Knowingly" mental state of "unlawful imprisonment" statute modifies phrase "without legal authority" – hence, ignorance of the law is an excuse to this charge. State v. Warfield, 103 Wn. App. 152 (Div. II, 2000) – Nov 00:20

KNOWINGLY MAKING FALSE STATEMENT IN OFFICIAL REPORT (RCW 40.16.030)

Knowingly making false statement in official report filed with Health Department regarding sewage system is felony violation of RCW 40.16.030. State v. Hampton, 100 Wn. App. 152 (Div. II, 2000) – Aug 00:09 Reversed by the Washington State Supreme Court; see next entry, this topic.

Knowingly making false statement in inspection report filed with Health Department concerning a sewage system was not a violation of RCW 40.16.030. State v. Hampton, 143 Wn.2d 789 (2001) – Sept 01:11

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

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

LEGISLATIVE DELEGATION

"Persistent prison misbehavior" law held to be unconstitutional delegation by Legislature. State v. Brown, 95 Wn. App. 952 (Div. III, 1999) – June 00:21 The Court of Appeals' decision was later affirmed by the Washington Supreme Court in a decision that was not digested in the **LED**.

LEGISLATION UPDATES

Medical Marijuana Initiative Takes Effect. Article – Jan 99:21

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

1999 Legislative Update – Part Two **-** Aug 99:02–10

1999 Legislative Index - Aug 99:10

Reminder Regarding "CJ's Law" Adopted In 1998. Article **–** Aug 99:11

2000 Legislative Update – Part One May 00:02

2000 Legislative Update – Part Two – June 00:02

2000 Legislative Update Index – Parts One And Two – June 00:10

2001 Legislative Update – Part One – July 01:01–16

2001 Legislative Update - Part Two – Aug 01:02–05

2001 Legislative Index - Parts One And Two – Aug 01:02–05

2001 Legislative Index - Part Three – Sept 01:04

2002 Legislative Update – Part One **–**May 02:02–05

2002 Legislative Update - Part Two – June 02:02–16

2002 Legislative Update - Part Three – July 02:01–17

2002 Legislative Index – June:02–14–15 **(Note: A few additions were made to Part Three after the Index was published in June)**

Correction Note Re Child Passenger Restraint Law – Aug 02:02

2003 Legislative Update – Part One – April 03:02

2003 Legislative Update – Part Two **–** June 03:02

2003 Legislative Update – Part Three – July 03:01

2003 Legislative Index – Part Four– Aug 03:02

LIMITATIONS PERIOD FOR PROSECUTION (RCW 9A.04.080)

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

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

In conspiracy case involving pawnshop owner and home–invasion robbers, court addresses issues of: (1) knowledge element of accomplice liability; (2) admissibility of co–conspirator hearsay; (3) tolling of statute of limitations for persons out of state; and (4) scope of restitution in conspiracy cases. State v. King, 113 Wn. App. 243 (Div. I, 2002) – July 03:21

Ex post facto constitutional defect found in California law that permitted prosecution for child sex abuse even though prior statute–of–limitations period had expired. Stogner v. California, 123 S.Ct. 2446 (2003) – Aug 03:05

LINEUPS, PHOTO IDENTIFICATIONS AND SHOWUPS

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

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

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

Showup ID probably unlawful because attorney–request by arrestee was not timely honored per court rule (CrR 3.1), but error held harmless. State v. Jaquez, 105 Wn. App. 699 (Div. II, 2001) – June 01:18

Note re identification procedures (Lineups, Photo ID's, and Showup ID's) article on CJTC LED web page – Aug 01:20

Photo montage where just one of the pictures met the victim's description of a buck–toothed person with wide gaps between his buck teeth was improperly suggestive, but in–court identification was reliable anyway. State v. Kinard, 109 Wn. App. 508 (Div. III. 2001) – March 02:15

State wins on "excited utterance" and "photo montage" issues in case where officer was shot during a traffic stop, and he was later interviewed and asked to review montage. State v. Ramires, 109 Wn. App. 749 (Div. III, 2002) – Aug 02:20

Photo montage was not impermissibly suggestive, because the differences between defendant's photo and the other photos were only "minor." State v. Vickers, 107 Wn. App. 960 (Div. II, 2001) – Aug 02:20

Affidavit establishes informant–based probable cause to search (hypertechnical challenges to PC rejected, including claim the informant's basis of knowledge was not shown); also, photo ID procedure was not impermissibly suggestive. State v. Vickers, 148 Wn.2d 91 (2002) – April 03:15

LIQUOR CONTROL

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

LOSS OF, DESTRUCTION OF, OR FAILURE TO PRESERVE EVIDENCE

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

Because blood tests were performed in Oregon, the law of Oregon controls on evidentiary privilege question; also, defendant loses due process argument regarding failure to preserve blood. State v. Donahue, 105 Wn. App. 67 (Div. II, 2001) – Nov 02:18

MALICIOUS HARASSMENT (RCW 9A.36.080)

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

Evidence held sufficient to support woman–hating defendant's conviction for malicious harassment of female police officer. State v. Johnson, 115 Wn. App. 890 (Div. III, 2003) – May 03:21

Virginia's cross–burning statute partially stricken, partially validated in "free speech" challenge. Virginia v. Black, 123 S.Ct. 1536 (2003) – Aug 03:04

MALICIOUS MISCHIEF (RCW 9A.48.070–100)

Evidence of second degree malicious mischief held sufficient in case of prankster playing with his foster brother's police radio. State v. Gardner, 104 Wn. App. 541 (Div. II, 2001) – April 01:17

Destruction of co–owned, co–possessed community property held not malicious mischief; Division Two both distinguishes and disagrees with Division One Webb decision. State v. Coria, 105 Wn. App. 51 (Div. II, 2001) – May 01:23 – Reversed by the Washington Supreme Court; see below, this topic

"Property of another" held under former malicious mischief statute to include community property destroyed by a community member. State v. Coria, 146 Wn.2d 631 (2002) – Sept 02:13 This proposition is even clearer under a 2002 amendment to RCW 9A.48.010. See May 02 **LED**:03.

"MEDICAL NECESSITY" DEFENSE

No "medical necessity" defense under federal drug laws; Washington law differs. U.S. v. Oakland Cannabis Buyers' Cooperative, 532 U.S. 483 (2001) – Aug 01:08

MILITARY DUTY CALL–UP

NOTE: CJTC will not consider as a lapse in law enforcement service the time periods during which law enforcement officers are called to active military duty – Nov 01:02

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

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

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

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

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

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

Premeditation evidence sufficient to support first degree murder conviction. State v. Townsend, 142 Wn.2d 838 (2001) – March 01:02

Firing single shot into car occupied by two people supports two convictions for attempted first degree murder even if shooter thought only one person in car. State v. Price, 103 Wn. App. 845 (Div. II, 2000) – March 01:17

"Whole statement" approach to co–defendant's statements against interest rejected; also, "major participation" required for death sentence for accomplice. State v. Roberts, 142 Wn.2d 471 (2000) – April 01:09

Assault cannot serve as the predicate felony under Washington's felony–murder statute. In re Personal Restraint of Andress, 147 Wn.2d 602 (2002) – Dec 02:16 Note: The 2003 Washington Legislature amended the second degree felony murder statute. See **April 03 LED:02**

Evidence held sufficient to support conviction for homicide by abuse under RCW 9A.32.055. State v. Madarash, 115 Wn. App. 500 (Div. II, 2003) – Oct 03:19

MUTUAL AID PEACE OFFICER POWERS ACT (Chapter 10.93 RCW)

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

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

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

NECESSITY DEFENSE

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

OBSTRUCTING (RCW 9A.76.020) AND RELATED OFFENSES

Evidence sufficient to convict for 1) "obstructing" and 2) "unlawful possession of firearm" (the latter prosecution was based on "constructive possession" rationale). State v. Turner, 103 Wn. App. 515 (Div. II, 2000) – March 01:11

Evidence sufficient to support convictions for 1) resisting arrest and 2) obstructing. State v. Ware, 111 Wn. App. 738 (Div. III, 2002) – Aug 02:22

PLEA BARGAINING

Banishment for 1 year from 4 counties upheld because it was part of a plea bargain. State v. Phelps, 113 Wn. App. 347 (Div. II, 2002) – Jan 03:21

PORNOGRAPHY/OBSCENITY

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

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

Federal statute banning virtual child pornography held to be overbroad in violation of free speech protection of the U.S. constitution. Ashcroft v. The Free Speech Coalition, 122 S.Ct. 1389 (2002) – June 02:17

POSSE COMITATUS ACT

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

PROCESSING STOLEN PROPERTY – (See "Theft and Related Offenses topic)

PROFITEERING (RCW 9A.83)

1995 amendment to Profiteering Act violated Washington constitution's "subject–in–title" and "single subject" requirements – "obstructing " laws likely affected. State v. Thomas, 103 Wn. App. 800 (Div. II, 2000) – Feb 01:17 (The 2001 Washington Legislature corrected this problem; see **July 01 LED:19**.)

PROSTITUTION

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

PUBLIC RECORDS LAW; RIGHT OF ACCESS TO COURT RECORDS AND PROCEEDINGS

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

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

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

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

Precedent of Dawson v. Daly does not protect against disclosure of performance evaluations of city manager. Spokane Research and Defense Fund v. Spokane, 99 Wn. App. 452 (Div. III, 2000) – Feb 02:21

Personal e–mails on government computer are public records, but the e–mails may be exempt from disclosure as "personal information." Tiberino v. Spokane County, 103 Wn. App. 680 (Div. III, 2000) – Feb 02:22

Public housing authorities may evict tenants based on drug violations that are committed by others without the tenants' knowledge. H.U.D. v. Rucker, 122 S.Ct. 1230 (2002) – June 02:16

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

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

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

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

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

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

Detective lawfully tricks defendant into e–mail, ICQ exchange with fictitious child: RCW 9.73 challenge rejected and attempted rape–of–child conviction upheld. State v. Townsend, 105 Wn. App. 622 (Div. III, 2001) – June 01:21 Affirmed by the Washington Supreme Court; see below, this topic.

"Vagina" under "sex offenses" chapter, RCW 9A.44, includes "labia minora;" also, 1986 statutory rape conviction is a "strike" under "two strikes" law. State v. Delgado, 109 Wn. App. 61 (Div. I, 2001) – Feb 02:15

Rape conviction upheld: evidence of victim's mental incapacitation supports jury's rejection of defendant's claim that he had consenting sex with extremely drunk woman. State v. Al–Hamdani, 109 Wn. App. 599 (Div. I, 2002) – Sept 02:17

Undercover detective's recording of internet ICQ ("I seek you") communications with suspected child molester held admissible under privacy act based on implied consent by defendant; also, "impossibility" defense rejected because crime charged was attempted rape. State v. Townsend, 147 Wn.2d 666 (2002) – March 03:11

Texas sodomy law directed at same–gender, consenting adult conduct held unconstitutional because not justified by legitimate state interests. Lawrence v. Texas, 123 S.Ct. 2472 (2003) – Aug 03:05

RESISTING ARREST (RCW 9A.76.040)

Evidence sufficient to support convictions for 1) resisting arrest and 2) obstructing. State v. Ware, 111 Wn. App. 738 (Div. III, 2002) – Aug 02:22

RESTITUTION (See also "Sentencing")

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

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

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

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

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

Insurance company has right to restitution in juvenile offender sentencing. State v. A.M.R., 108 Wn. App. 9 (Div. I, 2001) – March 02:20

Under direct–cause analysis, 12–year–old who possessed stolen car must pay restitution for damage caused by his 9–year–old brother. State v. Donahoe, 105 Wn. App. 97 (Div. III, 2001) – Sept 02:21

Juvenile Code authorizes sentence of restitution for victim's counseling costs in relation to assault in the fourth degree. State v. J.P., 111 Wn. App. 105 (Div. I, 2002) – Sept 02:22

Running of interest on restitution cannot be delayed by sentencing court. State v. Claypool, 111 Wn. App. 473 (Div. III, 2002) – Sept 02:22

Insurance company can be entitled to restitution in juvenile sentencing. State v. A.M.R., T.J.Z., 147 Wn.2d 91 (2002) – Nov 02:05

ROBBERY (Chapter 9A.56 RCW)

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

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

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

Robbery–one statute's element, "display what appears to be a…deadly weapon," is not met by mere evidence of a statement by defendant that he has a deadly weapon hidden on his person, unless such statement is accompanied by at least a physical gesture indicating the location of the alleged hidden weapon. State v. Scherz, 107 Wn. App. 427 (Div. III, 2001) – Feb 02:19 See 2002 amendment to first-degree robbery statute, reported in the June 02 **LED** at p.3.

SCHOOL SAFETY

Gregoire and Bergeson release safety guide to all Washington schools. News release. – Nov 99:21 This guide is now accessible on the internet at the Washington Attorney General's web site.

SEARCH AND SEIZURE

Abandoned Property

Some light shed on search issues of 1) voluntary abandonment of effects, 2) Mendez–based order to passenger to stay in vehicle, and 3) knowledge element of Parker "search incident" rule regarding non–arrested passenger's effects. State v. Reynolds, 144 Wn.2d 282 (2001) – Oct 01:08

Police search of jacket left by arrestee at scene of arrest held unlawful – State's theories of abandoned property and inventory search rejected. State v. Dugas, 109 Wn. App. 592 (Div. I, 2001) – March 02:02

Administrative Search Warrants

Courts lack authority under current laws to issue administrative search warrants to search for evidence of civil violation of county code. State v. Lansden, 144 Wn.2d 654 (2001) – Nov 01:03

Carroll Doctrine

"Carroll doctrine," "PC car search" decision of U.S. Supreme Court holds that police can search all personal effects in car, whether they belong to suspect or nonsuspects; ruling does not directly impact Washington law enforcement because, per State v. Ringer, Carroll doctrine does not apply under the Washington constitution. Wyoming v. Houghton, 143 L.Ed 2d 408 – May 99:02

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

Citizen As Government Agent (Or Not)

Police awareness of long–term, intense, independent investigation of son's death by his father did not make father a "government agent" for purposes of Search & Seizure law. State v. Swenson, 104 Wn. App. 744 (Div. I, 2000) – Jan 01:19

Apartment manager and defendant's mother acted as "private" searchers, not as government agents. State v. Krajeski, 104 Wn. App. 377 (Div. II, 2001) – March 01:09

Community Caretaking Function Exception to Warrant Requirement

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

"Community caretaking function" did not justify thorough search of home for identification documents relating to apparent suicide victim. State v. Schroeder, 109 Wn. App. 30 (Div. II, 2001) – Jan 02:09

Division One attempts to untangle "automatic standing" cases; Court also rejects State's arguments on impound, community caretaking and consent. State v. Kypreos, 110 Wn. App. 612 (Div. I, 2002)– May 02:20 In 2003, Division One issued a revised opinion in this case with the same result. See below, this subtopic.

Court majority favors State on five issues: 1) Payton–entry/order–to–exit–for–arrest–on–contempt–warrant; 2) "community caretaking" entry of residence to retrieve arrestee–resident's jacket; 3) emergency search for meth lab indicators; 4) third party consent to search shared boathouse; and 5) inevitable discovery. State v. Thompson, 112 Wn. App. 787 (Div. II, 2002) – Oct 02:07

Warrantless search of trailer held unlawful because search was investigatory, not "community caretaking," and was not justified by exigent circumstances or by consent. State v. Schlieker, 115 Wn. App. 264 (2003) – May 03:12

State loses on issues of 1) "automatic standing;" 2) impound authority over 5th wheel trailer; 3) "community caretaking;" and 4) implied consent by virtue of report of stolen vehicle. State v. Kypreos, 115 Wn. App. 207 (Div. I, 2003) – June 03:16

Computer Search and Seizure

Computer searches and seizures – link provided to federal DOJ guide. Dec 03:16

Consent Search Exception to Warrant Requirement

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

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

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

No Fourth Amendment privacy in motel registration records; no Ferrier application in federal court to consent request held to be voluntary. U.S. v. Cormier, 220 F.3d 1103 (9th Cir. 2000) – Oct 00:04

No standing under Steagald for day–visitor to challenge police entry of host's home; in any event, consent ok because request was not subject to Ferrier where officers were asking host for permission to enter and look for visitor wanted on arrest warrant. State v. Williams (Harlan M.), 142 Wn.2d 17 – Dec 00:14

Emergency exception to warrant requirement justifies initial entry of residence to investigate DV report; also, consent justifies follow–up search. State v. Johnson (Donovan Q.), 104 Wn. App. 409 (Div. II, 2001) – April 01:09

Three search rulings in sex molester case: (1) Ferrier consent argument rejected because case not "knock–and–talk"; but (2) search warrant declared partially unsupported under Thein analysis; and (3) Court of Appeals makes "plain view" ruling adverse to state on videotape–watching. State v. Johnson (Larry E.), 104 Wn. App. 489 (Div. II, 2001) – May 01:05

Ferrier precedent requires "knock–and–talk" consent search warnings in non–exigent investigation of reported drug–dealing in hotel room. State v. Kennedy, 107 Wn. App. 972 (Div. II, 2001) – Nov 01:06

Third–party consent search rule of Leach narrowly construed to recognize that one co–habitant alone can consent to residential *entry*, though not full residential *search*, while other co–habitant is present. State v. Hoggatt, 108 Wn. App. 257 (Div. II, 2001) – Nov 01:08

Based on the totality of the circumstances, a person known by officers to be without a key to an apartment lacked "apparent authority" to consent to police entry of the apartment. State v. Holmes, 108 Wn. App. 511 (Div. I, 2001) – Jan 02:05

Escapee–murderer who was a guest at an apartment loses challenge to 1) police entry to arrest him on warrant and 2) police search of apartment's common areas – the entry and search both were lawful because they were based on the hosts' consent. State v. Thang, 145 Wn.2d 630 (2002) – May 02:05

Division One attempts to untangle "automatic standing" cases; Court also rejects State's arguments on impound, community caretaking and consent. State v. Kypreos, 110 Wn. App. 612 (Div. I, 2002) – May 02:20

Brother's consent to search locked room in his home was a valid third party consent. State v. Floreck, 111 Wn. App. 135 (Div. II, 2002) – July 02:22

No Ferrier warnings were required where officers were merely asking resident for permission to come in and talk to her grandson; Court holds consent voluntary and also holds scope of consent not exceeded. State v. Khounvichai, 110 Wn. App. 722 (Div. I, 2002) Aug 02:08. Affirmed by the Washington Supreme Court; see below, this subtopic.

Random consent requests under drug interdiction program on intercity buses in Florida – no Fourth Amendment "seizure" occurred, and consent to search was voluntary, even though officers did not advise of right to not answer questions or of right to refuse consent. U.S. v. Drayton and Brown, 122 S.Ct. 2105 (2002) – Sept 02:02 Note: The analysis and result would likely be different under the Washington constitution, article 1, section 7.

Court majority favors State on five issues: 1) Payton–entry/order–to–exit–for–arrest–on–contempt–warrant; 2) "community caretaking" entry of residence to retrieve arrestee–resident's jacket; 3) emergency search for meth lab indicators; 4) third party consent to search shared boathouse; and 5) inevitable discovery. State v. Thompson, 112 Wn. App. 787 (Div. II, 2002) – Oct 02:07

Multiple issues decided: 1) no "seizure" of person occurred in ID request and FIR questioning; 2) "plain view" justified taking "cook spoon" from car; 3) search was not "incident to arrest" because actual arrest did not occur before search; 4) consent was not voluntary where officer stated that he had independent authority to search "incident to arrest"; 5) "inevitable discovery" exception to exclusionary rule not applicable. State v. O'Neill, 148 Wn.2d 564 (2003) – April 03:03

Warrantless search of trailer held unlawful because search was investigatory, not "community caretaking," and was not justified by exigent circumstances or by consent. State v. Schlieker, 115 Wn. App. 264 (2003) – May 03:12

State loses on issues of 1) "automatic standing;" 2) impound authority over 5th wheel trailer; 3) "community caretaking;" and 4) implied consent by virtue of report of stolen vehicle. State v. Kypreos, 115 Wn. App. 207 (Div. I, 2003) – June 03:16

Officers need not give Ferrier warnings if asking for consent to enter residence only to talk to a suspect (not to search). State v. Khounvichai, 149 Wn.2d 557 (2003) – Aug 03:06

Apartment tenant did not have actual or apparent authority to consent to search of guest's eyeglass case. State v. Rison, 116 Wn. App. 955 (Div. III, 2003) – Aug 03:11

Correctional Officer Searches Of Legal Documents

Additional fact–finding required to determine whether jail officers' inspections of criminal defendants' legal documents were justified by security concerns. State v. Garza, 99 Wn. App. 291 (Div. III, 2000) – Jan 01:21

Corrections To Typos In Warrant At Scene

Officer's on–scene correction of typo in telephonic search warrant to allow search for "methamphetamine" was ok; also, Court rejects defendants' challenges based on scope–of–search, pre–warrant entry of property, and purported "knock–and–talk." State v. Dodson, Cardwell and Harnden, 110 Wn. App. 112 (Div. III, 2002) – May 02:15

Crime Scene Search/Death Scene Search

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

Drug–Testing

South Carolina public hospital's drug–testing policy for pregnant women violates Fourth Amendment, because crime control was goal of governmental policy. Ferguson v. City of Charleston, S.C., 532 U.S. 67 (2001) – June 01:05

Employer Authority To Search For Non–Criminal Investigation Reasons

City employer's cooperation with FBI's criminal search does not qualify the search as a non–investigatory employer search. U.S. v. Jones, 286 F.3d 1146 (9th Cir. 2002) – March 03:10

Entry Of Private Premises To Arrest (Payton/Steagald Rules)

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

No standing under Steagald for day–visitor to challenge police entry of host's home; in any event, consent ok because request was not subject to Ferrier where officers were asking host for permission to enter and look for visitor wanted on arrest warrant. State v. Williams (Harlan M.), 142 Wn.2d 17 – Dec 00:14

State concedes issue of "exigent circumstances" for warrantless residential–entry; and State loses on issue of "attenuation" re officer's post–arrest identification of defendant; but burglary conviction is upheld on "harmless error" analysis. State v. Le, 103 Wn. App. 354 (Div. I, 2000) – Feb 01:07

Escapee from juvenile institution had no reasonable privacy expectation against search of residence where friend's friend was allowing him to reside. State v. Thang, 103 Wn. App. 660 (Div. III, 2000) – Feb 01:16 Affirmed by the Washington Supreme Court; see below, this subtopic.

Officer in hot pursuit of minor–in–possession suspect lacked authority to make a forcible warrantless entry of a third party's residence. State v. Bessette, 105 Wn. App. 793 (Div. III, 2001) – Aug 01:14

Escapee–murderer who was a guest at an apartment loses challenge to 1) police entry to arrest him on warrant and 2) police search of apartment's common areas, where entry and search both were based on hosts' consent. State v. Thang, 145 Wn.2d 630 (2002) – May 02:05

"Payton Rule" limiting residential entry to make an arrest cannot be ignored; probable cause to arrest does not by itself justify warrantless, non–consenting, non–exigent entry. Kirk v. Louisiana, 122 S.Ct. 2458 (2002) – Sept 02:05

Court majority favors State on five issues, including issues relating to Payton–entry/order–to–exit–for–arrest–on–contempt–warrant and "community caretaking" entry of residence to retrieve arrestee–resident's jacket. State v. Thompson, 112 Wn. App. 787 (Div. II, 2002) – Oct 02:07

Entry of residence to arrest on warrant: Payton's "reason to believe" standard for determining presence of suspect held identical to "probable cause" standard. U.S. v. Gorman, 314 F.3d 1105 (9th Cir. 2002) – March 03:10

Exclusionary Rule (see also subtopics "Independent Source Exception to Exclusionary Rule"; "Inevitable Discovery Exception to Exclusionary Rule")

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

State concedes issue of "exigent circumstances" for warrantless residential–entry; and State loses on issue of "attenuation" re officer's post–arrest identification of defendant; but burglary conviction is upheld on "harmless error" analysis. State v. Le, 103 Wn. App. 354 (Div. I, 2000) – Feb 01:07

Exclusionary rule applies where evidence is obtained by other–state officer in Washington arrest which is not expressly authorized by RCW's. State v. Barker, 143 Wn.2d 915 (2001) – Oct 01:11

Court majority favors state on five issues, including issue of "inevitable discovery." State v. Thompson, 112 Wn. App. 787 (Div. II, 2002) – Oct 02:07

State–conceded "seizure" of late–night sleepers in car at Denny's restaurant was not justified by "community caretaking function"; later stop for traffic violation was "fruit" of earlier unlawful "seizure." State v. Cerrillo, 114 Wn. App. 259 (Div. III, 2002) – Jan 03:14

Multiple issues decided: 1) no "seizure" of person occurred in ID request and FIR questioning; 2) "plain view" justified taking "cook spoon" from car; 3) search was not "incident to arrest" because actual arrest did not occur before search; 4) consent was not voluntary where officer stated that he had independent authority to search "incident to arrest"; 5) "inevitable discovery" exception to exclusionary rule not applicable. State v. O'Neill, 148 Wn.2d 564 (2003) – April 03:03

Extended questioning of suspect in driveway on December evening held reasonable under Terry v. Ohio; also, state loses some, wins some, on issues of "harmless error," "fruit of the poisonous tree"/"attenuation", "inevitable discovery," and gun–crime sentencing. State v. McReynolds, 117 Wn. App. 309 (Div. III, 2003) – Oct 03:14

Execution Of Search Warrants

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

Exigent and Emergency Circumstances Exception To Warrant Requirement

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

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

State concedes issue of "exigent circumstances" for warrantless residential–entry; and State loses on issue of "attenuation" re officer's post–arrest identification of defendant; but burglary conviction is upheld on "harmless error" analysis. State v. Le, 103 Wn. App. 354 (Div. I, 2000) – Feb 01:07

Emergency exception to warrant requirement justifies initial entry of residence to investigate DV report; also, consent justifies follow–up search. State v. Johnson (Donovan Q.), 104 Wn. App. 709 (Div. II, 2001) – April 01:09

"Community caretaking"/"emergency exception" justifies entry of marijuana–smoking babysitter's residence, as well as justifying subsequent non–pretextual search for her in bedroom. State v. Gibson, 104 Wn. App. 792 (Div. II, 2001) – May 01:17

Although nearby unattached garage was not covered by search warrant that officers were executing at house, exigent circumstances justified their warrantless entry of the garage; officers did not "create" exigency. U.S. v. Ojeda, 276 F.3d 486 (9th Cir. 2002) – April 02:07

Court majority favors State on five issues, including issue whether emergency search for meth lab indicators was justified. State v. Thompson, 112 Wn. App. 787 (Div. II, 2002) – Oct 02:07

Forfeiture–Related Seizure And Search

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

Identity Of Confidential Informant (Disclose Or Protect)

No disclosure of CI's ID because not relevant or needed for fair determination of the case. State v. Lusby, 105 Wn. App. 257 (Div. III, 2001) – Sept 01:18

Impound/inventory Exception to Warrant Requirement

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

Police search of jacket left by arrestee at scene of arrest held unlawful – State's theories of abandoned property and inventory search rejected. State v. Dugas, 109 Wn. App. 592 (Div. I, 2001) – March 02:02

Division One attempts to untangle "automatic standing" cases; Court also rejects State's arguments on impound, community caretaking and consent. State v. Kypreos, 110 Wn. App. 612 (Div. I, 2002) – May 02:20 Note: This decision was later affirmed in a revised opinion; see below, this subtopic.

Impound ordinances or WAC rules adopted under authority of RCW 46.55.113 provisions relating to vehicles driven by suspended, revoked drivers must allow officers to consider reasonable alternatives to impoundment. All Around Underground, Inc. v. WSP, 148 Wn.2d 145 (2002) – Feb 03:02

State loses on issues of 1) "automatic standing;" 2) impound authority over 5th wheel trailer; 3) "community caretaking;" and 4) implied consent by virtue of report of stolen vehicle. State v. Kypreos, 115 Wn. App. 207 (Div. I, 2003) – June 03:16

Impound of car under city ordinance mandating impound of cars of drivers with suspended licenses held to violate RCW 46.55.113; also towing and other fees, but not loss–of–use damages, recoverable under statute's "good faith" provision; attorney fees held not recoverable. In re 1992 Honda Accord, 117 Wn. App. 510 (Div. III, 2003) – Sept 03:21

Incident to Arrest (Motor Vehicle) Exception to Warrant Requirement

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

Bringing drug–sniffing dog to assist in "search incident" at a car held lawful; ten-minute delay waiting for K-9 unit to arrive ok; also, removing ashtray after dog alert there permitted as part of search. State v. Boursaw, 94 Wn. App. 629 (Div. I, 1999) – May 99:07

Entire Winnebago subject to search incident to custodial arrest of occupant; also, zipped cushion not a "locked" container under Stroud. State v. Vrieling, 97 Wn. App. 152 (Div. I, 1999) – Nov 99:07 Affirmed by the Washington Supreme Court; see below, this subtopic.

Stroud's "search incident" rule for cars revised as to items belonging to nonarrestees; "bright line" gets blurry as court restricts search authority as to nonarrestee personal effects. State v. Parker, State v. Jines, State v. Hunnel, 139 Wn.2d 486 (1999) – Dec 99:13

Warrant arrest that was made 300 feet away from vehicle recently occupied by arrestee did not justify "search incident" of vehicle under Stroud rule. State v. Porter, 102 Wn. App. 327 (Div. II, 2000) – Nov 00:05

In "buy–bust" operation, arrest made in tavern bathroom 50–75 feet away from vehicle which suspect had briefly occupied following drug sale did not justify "search incident" of vehicle under Stroud rule. State v. Wheless, 103 Wn. App. 749 (Div. I, 2000) – March 01:04

Driver who kept his gun in his passenger's purse not allowed to raise Parker "search incident to arrest" challenge to search of her purse. State v. Jones, 104 Wn. App. 966 (Div. II, 2001) – April 01:12 Reversed by the Washington Supreme Court; see below, this subtopic.

Pro–State rulings on seizure–of–person, search–incident–to–arrest in case involving late–night spotlighting and contacting of man in parked car. State v. O'Neill, 104 Wn. App. 850 (Div. I, 2001) – May 01:20 Reversed by the Washington Supreme Court; see below, this subtopic.

When motor home is being used as a vehicle on the roads, Stroud's "bright line" rule applies, and the entire readily–accessible passenger area is subject to search incident to custodial arrest of driver or passenger. State v. Vrieling, 144 Wn.2d 489 (2001) – Oct 01:02

Some light shed on search issues of 1) voluntary abandonment of effects, 2) Mendez–based order to passenger to stay in vehicle, and 3) knowledge element of Parker "search incident" rule regarding non–arrested passenger's effects. State v. Reynolds, 144 Wn.2d 282 (2001) – Oct 01:08

Under Parker MV "search incident" rule, where there is confusion over ownership of property in passenger area, officers may search such personal property for ID. State v. Jackson, 107 Wn. App. 646 (Div. I, 2001) – Oct 01:15

Vehicle search held "not incident to arrest" because arrestee had no ready access to or immediate control of vehicle at the time of arrest; also, State's impound–inventory theory rejected because search was investigatory. State v. Johnston, 107 Wn. App. 280 (Div. II, 2001) – Oct 01:18

Custodial arrest for driving while suspended upheld even though officer did not follow local policy by checking with jail before arresting and conducting search incident to arrest; also, suspect's locking his truck after he was arrested did not preclude search–incident of truck. State v. O'Neill, 110 Wn. App. 604 (Div. III, 2002) – June 02:19

Driver arrested on warrant had "automatic standing" to challenge search of his girlfriend–passenger's purse under Parker search–incident rule. State v. Jones, 146 Wn.2d 328 (2002) – July 02:11

Where "arresting" officer told suspended–driving "arrestee" before searching vehicle that, following the search, the officer was going to transport, book and release the driver, the "arrest" was "custodial" and the search of the vehicle was a valid "search incident" despite jail policy against booking on such "nonviolent misdemeanor charges." State v. Clausen, 113 Wn. App. 657 (Div. II, 2002) – Dec 02:17

Where officer "arrested" a suspended driver based on both (1) his suspended–license status and (2) a misdemeanor warrant, the arrest was "custodial" for "search incident" purposes even though, following the vehicle "search incident": (a) the officer learned that the warrant was "not extraditable," and (b) upon learning the status of the warrant, a sergeant directed the officer to cite and release the driver. State v. Balch, 114 Wn. App. 55 (Div. II, 2002) – Dec 02:19

Article: Custodial arrest and search incident to arrest of those arrested for driving while license suspended. March 03:02

DWLS "arrest" under Poulsbo administrative booking policy held "custodial" and "search incident to arrest" therefore upheld. State v. Craig, 115 Wn. App. 191 (Div. II, 2002) – March 03:12

Vehicle and arrest must have close physical connection and time connection to justify MV search incident to arrest: despite factual finding that driver–side door of pickup truck was open and that arrestee was located on that side of his truck at time that arrest occurred, a further finding specifying only that arrestee was "near" his truck at time of arrest fails to support "search incident." State v. Turner, 114 Wn. App. 653 (Div. II, 2002) – March 03:15

Multiple issues decided: 1) no "seizure" of person occurred in ID request and FIR questioning; 2) "plain view" justified taking "cook spoon" from car; 3) search was not "incident to arrest" because actual arrest did not occur before search; 4) consent was not voluntary where officer stated that he had independent authority to search "incident to arrest"; 5) "inevitable discovery" exception to exclusionary rule not applicable. State v. O'Neill, 148 Wn.2d 564 (2003) – April 03:03

Incident To Arrest (Non–vehicle Search) Exception to Warrant Requirement

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

Strip search of young drug dealer at scene of arrest held unlawful. State v. Rulan C., 97 Wn. App. 884 (Div. I, 1999) – May 99:15 (Amended opinion published at 990 P.2d 422; no change in main holding.)

"Gloria Smith" rule barring inventory searches at booking on bailable arrest warrants does not limit searches in the field "incident to arrest," even if two searches occur in field, and second is delayed due to prisoner transfer. State v. Ross, 106 Wn. App. 876 (Div. I, 2001) – Sept 01:15

"Independent Source" Exception To Exclusionary Rule

Because initial observation of marijuana patch from adjoining property was lawful and provided "independent source" for search warrant, follow–up unlawful intrusion onto property did not require suppression of evidence subsequently seized under warrant. State v. Smith (Greg and Dina), 113 Wn. App. 846 (Div. III, 2002) – Jan 03:09

"Inevitable Discovery" Exception To Exclusionary Rule

Multiple issues decided: 1) no "seizure" of person occurred in ID request and FIR questioning; 2) "plain view" justified taking "cook spoon" from car; 3) search was not "incident to arrest" because actual arrest did not occur before search; 4) consent was not voluntary where officer stated that he had independent authority to search "incident to arrest"; 5) "inevitable discovery" exception to exclusionary rule not applicable. State v. O'Neill, 148 Wn.2d 564 (2003) – April 03:03

Extended questioning of suspect in driveway on December evening held reasonable under Terry v. Ohio; also, state loses some, wins some, on issues of "harmless error," "fruit of the poisonous tree"/"attenuation", "inevitable discovery," and gun–crime sentencing. State v. McReynolds, 117 Wn. App. 309 (Div. III, 2003) – Oct 03:14

Jail Booking Inventory Of Effects

"Gloria Smith" rule barring inventory searches at booking on bailable arrest warrants does not limit searches in the field "incident to arrest," even if two searches occur in field, and second is delayed due to prisoner transfer. State v. Ross, 106 Wn. App. 876 (Div. I, 2001) – Sept 01:15

Knock And Announce (RCW 10.31.040 and Constitutional Requirements)

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

5–4 decision for State on exigent circumstances, knock–and–announce issues; majority opinion avoids "open view" question concerning officer looking through small windowsill–level gap in motel room curtain. State v. Cardenas, 146 Wn.2d 400 (2002) – July 02:07

Omission Of Facts By Officer – Affiant (Reckless? Intentional?)

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

Omission of non–material facts from search warrant affidavit not fatal to probable cause determination on warrant. State v. Gore, 143 Wn.2d 288 (2001) – Jan 02:03

Court rules for State on search–warrant–PC and omissions–from–affidavit issues; Court also rules that separate warrant was not required for installation and tracking of Global Positioning System tracking devices, but implies warrant may be required in future cases. State v. Jackson, 111 Wn. App. 660 (Div. III, 2002) – Aug 02:17

Open View (See also "Privacy Expectations, Scope of Constitutional Protections")

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

Despite fact that driver of stopped vehicle was known to be a cocaine dealer and seemed nervous and evasive, officer's "open view" of suspicious white powder on driver's pants leg held to not justify entry of vehicle to seize and test the powder. State v. Lemus, 103 Wn. App. 94 (Div. III, 2000) – Feb 01:02

Court rules that there was PC to arrest defendant for using drug paraphernalia; Court also rules that paraphernalia was in "open view." State v. Neeley, 113 Wn. App. 100 (Div. III, 2002) – Nov 02:05

Particularity Requirement

Affidavit established probable cause to search computer for child porn through its description of report from computer repairman; also, clerical error in warrant referencing wrong crime was not fatal to warrant's validity, because warrant adequately described items to be seized and searched. State v. Wible, 113 Wn. App. 18 (Div. II, 2002) – Oct 02:19

Search under warrant of meth dealer's residence upheld: 1) Thein's residence–nexus probable cause test met; 2) warrant was overbroad but severable; 3) officers' delay in serving warrant until 10th day after issuance did not result in dissipation of probable cause. State v. Maddox, 116 Wn. App. 796 (Div. II, 2003) – Oct 03:06

Plain View Authority To Seize Evidence

Three search rulings in sex molester case: (1) Ferrier consent argument rejected because case not "knock–and–talk"; but (2) search warrant declared partially unsupported under Thein analysis; and (3) Court of Appeals makes "plain view" ruling adverse to State on videotape–watching. State v. Johnson (Larry E.), 104 Wn. App. 489 (Div. II, 2001) – May 01:05

Multiple issues decided: 1) no "seizure" of person occurred in ID request and FIR questioning; 2) "plain view" justified taking "cook spoon" from car; 3) search was not "incident to arrest" because actual arrest did not occur before search; 4) consent was not voluntary where officer stated that he had independent authority to search "incident to arrest"; 5) "inevitable discovery" exception to exclusionary rule not applicable. State v. O'Neill, 148 Wn.2d 564 (2003) – April 03:03

Privacy Expectation, Scope Of Constitutional Protections (See also "Open View")

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

Warrantless nighttime check of garage near side–yard driveway held by Court of Appeals to have impermissibly invaded curtilage, thus violating defendant's rights under Fourth Amendment. State v. Ross, 91 Wn. App. 814 (Div. II, 1998) – May 99:13 Affirmed by the Washington Supreme Court; see below, this subtopic.

Drug–dog sniff of students declared to be an unreasonable "search". B.C. v. Plumas (Cal.) Unified School District, 192 F.3d 1260 (9th Cir. 1999) – Dec 99:12

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

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

Officer's manipulation of soft bag was "search" without justification. Bond v. U.S., 120 S.Ct. 1462 (2000) – June 00:12

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

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

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

No Fourth Amendment privacy in motel registration records; no Ferrier application in federal court to consent search request; consent held to be voluntary. U.S. v. Cormier, 220 F.3d 1103 (9th Cir. 2000) – Oct 00:04

Under Fourth Amendment, a guest's overnight stay in his host's home need not have a social purpose in order for the guest to have privacy protection against government. U.S. v. Gamez–Orduno, 253 F.3d 453 (9th Cir. 2000) – April 01:08

Enclosed garage gets protection against warrantless, nonconsenting police entry even though: 1) garage door open, 2) loud music playing inside, and 3) renter directed officer to look for resident in garage. State v. Dyreson, 104 Wn. App. 703 (Div. III, 2001) – May 01:15 (Note that knock–and–announce rule would likely apply here as well.)

Thermal imaging of residence requires search warrant under 4th Amendment. Kyllo v. U.S., 121 S.Ct. 2038 (2001) – Aug 01:07

Random checking of MV license plate numbers against DOL data upheld. State v. Martin, 106 Wn. App. 850 (Div. I, 2001) – Aug 01:09 Affirmed by the Washington Supreme Court in State v. McKinney, 148 Wn.2d 20 (2002); see below, this subtopic.

Social guest in home which officers entered under unlawful search warrant held to have automatic standing to challenge the entry. State v. Magneson, 107 Wn. App. 221 (Div. II, 2001) – Nov 01:12

Consent search at mother's home did not violate defendant's rights; under totality of circumstances, he lacked privacy rights there. State v. Francisco, 107 Wn. App. 247 (Div. I, 2001) – Nov 01:14

Officer's on–scene correction of typo in telephonically obtained search warrant to allow search for "methamphetamine" was ok; also, Court rejects defendants' challenges based on scope–of–search, pre–warrant entry of property, and purported "knock–and–talk." State v. Dodson, Cardwell and Harnden, 110 Wn. App. 112 (Div. III, 2002) – May 02:15

5–4 decision for State on exigent circumstances, knock–and–announce issues; majority opinion avoids "open view" question concerning officer's look into room through small windowsill–level gap in motel room window curtain. State v. Cardenas, 146 Wn.2d 400(2002) – July 02:07

Court rules for State on search–warrant–PC and omissions–from–affidavit issues; Court also rules that a separate warrant was not required for installation and tracking of Global Positioning System tracking devices, but Court implies warrant may be required in other cases. State v. Jackson, 111 Wn. App. 660 (Div. III, 2002) – Aug 02:17 Affirmed on other grounds by the Washington Supreme Court; see below, this subtopic.

Court upholds both: (1) warrantless, delayed, probable cause seizure of rapist's shoes from the jail's inmate–property room; and (2) warrantless inspection of those shoes. State v. Cheatam, 112 Wn. App. 778 (Div. II, 2002) – Oct 02:02 Affirmed by Washington Supreme Court in a decision issued December 11, 2003 to be addressed in the February 2004 **LED**.

Random checking of license plates and obtaining DOL information does not violate the Washington constitution's article one, section seven. State v. McKinney, 148 Wn.2d 20 (2002) – Jan 03:05

State prevails on issues of: 1) no privacy in garbage can at neighboring abandoned house; 2) voluntariness of confession; 3) sufficiency of evidence re meth manufacturing; and 4) sufficiency of evidence re reckless burning. State v. Hepton, 113 Wn. App. 673 (Div. III, 2002) – Feb 03:15

Strip search inside police van under warrant to search drug dealer's person held: 1) supported by probable cause and 2) reasonably executed. State v. Hampton, 114 Wn. App. 486 (Div. II, 2002) – Feb 03:19

Prescription drug records may, per Washington state statute and per federal and state constitutions, be inspected by pharmacy board or law officers, and that information may be passed on to prosecutor. Murphy v. State, 115 Wn. App. 297 (Div. I, 2003) – April 03:20

Under Washington constitution, article 1, section 7, search warrant required for police use of GPS device; but warrant affidavit held to establish probable cause, so state prevails. State v. Jackson, 150 Wn.2d 521 (2003) – Nov 03:02

Probable Cause To Search

Court criticizes broad search warrant authorization for "controlled substances," as well as affidavit's "nexus" generalizations: but warrant upheld. State v. Thein, 91 Wn. App. 476 (Div. I, 1998) – Jan 99:13 Reversed by the Washington Supreme Court; see below, this subtopic.

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

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

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

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

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

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

Three search rulings in sex molester case: (1) Ferrier consent argument rejected because case not "knock–and–talk"; but (2) search warrant declared partially unsupported under Thein probable cause analysis; and (3) court makes "plain view" ruling adverse to state on videotape–watching. State v. Johnson (Larry E.), 104 Wn. App. 489 (Div. II, 2001) – May 01:05

Thein PC issue resolved against State in burglar's challenge to search warrant for his home; but court makes pro–state rulings on issues re citizen–informant credibility, and re Miranda–initiation–of–contact. State v. McReynolds, 104 Wn. App. 560 (Div. III, 2001) – May 01:11

Search warrant affidavit fails to establish PC that misdemeanant wanted on arrest warrant would be inside third party premises targeted by search warrant. State v. Anderson (Rob Joseph), 105 Wn. App. 223 (Div. III, 2001) – June 01:13

Omission of non–material facts from search warrant affidavit not fatal to probable cause determination on warrant. State v. Gore, 143 Wn.2d 288 (2001) – Jan 02:03

Thein distinguished – evidence in car suggesting driver was marijuana dealer, along with other evidence, including driver's admissions to officer, adds up to PC to search residence. State v. McGovern, State v. King, 111 Wn. App. 495 (Div. II, 2002) – July 02:13

Facts add up to PC to search motel room where local resident with drug–arrest history checked into motel and received multiple phone calls and multiple visitors. State v. Tarter, 111 Wn. App. 336 (Div. III, 2002) – Aug 02:06

Court rules for state on search–warrant–PC and omissions–from–affidavit issues; Court also rules that separate warrant was not required for installation and tracking of Global Positioning System tracking devices, but implies warrant may be required in future cases. State v. Jackson, 111 Wn. App. 660 (Div. III, 2002) – Aug 02:17 Affirmed on other grounds by Washington Supreme Court; see below, this subtopic.

Affidavit established probable cause to search computer for child porn through its description of report from computer repairman; also, clerical error in warrant referencing wrong crime was not fatal to warrant's validity, because warrant adequately described items to be seized and searched. State v. Wible, 113 Wn. App. 18 (Div. II, 2002) – Oct 02:19

Under Thein's probable cause standard, general statements about the habits of sex offenders failed to establish PC to search personal computer; also, computer was not subject to search just to counter a possible alibi. State v. Nordlund, 113 Wn. App. 171 (Div. II, 2002) – Nov 02:08

Strip search inside police van under warrant to search drug dealer's person held: 1) supported by probable cause and 2) reasonably executed. State v. Hampton, 114 Wn. App. 486 (Div. II, 2002) – Feb 03:19

Affidavit establishes informant–based probable cause to search (hypertechnical challenges to PC rejected, including claim the informant's basis of knowledge was not shown); also, photo ID procedure was not impermissibly suggestive. State v. Vickers, 148 Wn.2d 91 (2002) – April 03:15

CI–based probable cause found in rejection of meth defendant's challenge to probable cause support for search warrant. State v. Shaver, 116 Wn. App. 375 (Div. III, 2003) – June 03:21

Thein residence–nexus probable cause test met for search of outdoor marijuana grower's residence; also, trial court was required to impose mandatory $1000 fine under RCW 69.50.430(1). State v. Cowin, 116 Wn. App. 752 (Div. II, 2003) – Aug 03:14

Search under warrant of meth dealer's residence upheld: 1) Thein's residence–nexus probable cause test met; 2) warrant was overbroad but severable; 3) officers' delay in serving warrant until 10th day after issuance did not result in dissipation of probable cause. State v. Maddox, 116 Wn. App. 796 (Div. II, 2003) – Oct 03:06

Under Washington constitution, article 1, section 7, search warrant required for police use of GPS device; but warrant affidavit held to establish probable cause, so state prevails. State v. Jackson, 150 Wn.2d 521 (2003) – Nov 03:02

Probationer, Parolee Searches

Fourth Amendment does not prohibit warrantless, reasonable suspicion–based search of probationer's residence by California law enforcement officer pursuing criminal investigation; Washington law may yield a different result. U.S. v. Knights, 122 S. Ct. 587 (2001) – Feb 02:03

Protective Sweeps

Where officers were executing search warrant authorizing arrest of resident on felony warrants, and officers had already made arrest, "protective sweep" of outbuildings was not justified by any other facts. State v. Hopkins, State v. Smith (Russell A.) 113 Wn. App. 954 (Div. III, 2002) – Jan 03:06

Schools – Searches By School Officials

K–12 student's violation of his school's closed–campus rule did not justify a search of the student by a school attendance officer. State v. B.A.S., 103 Wn. App. 549 (Div. I, 2000) – Feb 01:13

Scope Of Search Under Warrant

Officer's on–scene correction of typo in telephonically obtained search warrant to allow search for "methamphetamine" was ok; also, court rejects defendants' challenges based on scope–of–search, pre–warrant entry of property, and purported "knock–and–talk." State v. Dodson, Cardwell and Harnden, 110 Wn. App. 112 (Div. III, 2002) – May 02:15

Strip search inside police van under warrant to search drug dealer's person held: 1) supported by probable cause and 2) reasonably executed. State v. Hampton, 114 Wn. App. 486 (Div. II, 2002) – Feb 03:19

Securing Premises Based On PC To Search

Where police have PC to search home, and resident voluntarily steps outside, 4th Amendment permits police to restrict him from entering his home while they seek warrant. Illinois v. McArthur, 531 U.S. 226 (2001) – April 01:02

Standing

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

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

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

No standing under Steagald for day–visitor to challenge police entry of host's home; in any event, consent ok because request was not subject to Ferrier where officers were asking host for permission to enter and look for visitor wanted on arrest warrant. State v. Williams (Harlan M.), 142 Wn.2d 17 (2000) – Dec 00:14

Escapee from juvenile institution had no reasonable privacy expectation against search of residence where friend's friend was allowing him to reside. State v. Thang, 103 Wn. App. 660 (Div. III, 2000) – Feb 01:16 Affirmed by the Washington Supreme Court; see above under "Search and Seizure," subtopic Consent Search Exception to Warrant Requirement."

Social guest in home which officers entered under unlawful search warrant held to have automatic standing to challenge the entry. State v. Magneson, 107 Wn. App. 221 (Div. II, 2001) – Nov 01:12

Consent search at mother's home did not violate defendant's rights; under totality of circumstances, he lacked privacy rights there. State v. Francisco, 107 Wn. App. 247 (Div. I, 2001) – Nov 01:14

Division One attempts to untangle "automatic standing" cases; Court also rejects State's arguments on impound, community caretaking and consent. State v. Kypreos, 110 Wn. App. 612 (Div. I, 2002) – May 02:20 In 2003, Division One issued a revised opinion in this case with the same result – see below, this subtopic.

Driver arrested on warrant had "automatic standing" to challenge search of his girlfriend–passenger's purse under Parker search–incident rule. State v. Jones, 146 Wn.2d 328 (2002) – July 02:11

State loses on issues of 1) "automatic standing;" 2) impound authority over 5th wheel trailer; 3) "community caretaking;" and 4) implied consent by virtue of report of stolen vehicle. State v. Kypreos, 115 Wn. App. 207 (Div. I, 2003) – June 03:16

SELF DEFENSE/DEFENSE OF OTHERS

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

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

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

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

"Custodial assault": juvenile inmates in juvenile institutions are subject to same narrow self–defense rule that limits use of force by citizens who resist arrest and that limits adult prisoners who use force against correctional officers in adult facilities. State v. Garcia, 107 Wn. App. 545 (Div. II, 2001) – Jan 02:22

Evidence in murder prosecution insufficient to support self defense theory. State v. Read, 147 Wn.2d 238 (2002) – Nov 02:04

SENTENCING (See also "Restitution")

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

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

No–contact order is "requirement of sentence" barring discharge certificate. State v. Miniken, 100 Wn. App. 925 (Div. I, 2000) – Aug 00:18

"Vagina" under "sex offenses" chapter, RCW 9A.44, includes "labia minora;" also, 1986 statutory rape conviction is a "strike" under "two strikes" law. State v. Delgado, 109 Wn. App. 61 (Div. I, 2001) – Feb 02:15

In sentencing proceeding, community corrections officer may testify to disagreement with prosecutor's plea bargain, but investigating law enforcement officer may not. State v. Sanchez, State v. Harris, 146 Wn.2d 339 (2002) – Aug 02:06

Cocaine seller's "school bus stop" sentence enhancement upheld over his objections to method of designation and recognizability of "bus stop." State v. Sanchez, 104 Wn. App. 976 (Div. III, 2001) – Sept 02:15

Firearm sentencing statute held to violate constitutional equal protection standard in enhancing penalty for short–barreled shotguns, but not for machine guns; but Court holds on statutory interpretation question that an unloaded firearm is still a firearm. State v. Berrier, 110 Wn. App. 639 (Div. II, 2002) – Sept 02:16

"Armed with a deadly weapon at the time of commission of the crime" sentencing provision receives conflicting interpretations in split decision favoring the state. State v. Schelin, 147 Wn.2d 562 (2002) – Feb 03:07

Federal constitution's prohibition against "cruel and unusual" punishment does not preclude two consecutive 25 years–to–life sentences under California "three strikes" law for man who committed two petty thefts, each of which qualified separately under California's "three strikes" law as a "third strike." Lockyer v. Andrade, 123 S.Ct. 1166 (2003) – May 03:04

Federal constitution's prohibition against "cruel and unusual" punishment does not preclude 25–years–to–life sentence under California "three strikes" law where "third strike" was felony theft of over $1000 worth of golf clubs. Ewing v. California, 123 S.Ct 1179 (2003) – May 03:04

In conspiracy case involving pawnshop owner and home–invasion robbers, court addresses issues of: (1) knowledge element of accomplice liability; (2) admissibility of co–conspirator hearsay; (3) tolling of statute of limitations for persons out of state; and (4) scope of restitution in conspiracy cases. State v. King, 113 Wn. App. 243 (Div. I, 2002) – July 03:21

Juvenile court not permitted to order restitution for victim counseling where crime is not a sex offense. State v. J. P., 149 Wn.2d 444 (2003) – Aug 03:10

Thein residence–nexus probable cause test met for search of outdoor marijuana grower's residence; also, trial court was required to impose mandatory $1000 fine under RCW 69.50.430(1). State v. Cowin, 116 Wn. App. 752 (Div. II, 2003) – Aug 03:14

Extended questioning of suspect in driveway on December evening held reasonable under Terry v. Ohio; also, state loses some, wins some, on issues of "harmless error," "fruit of the poisonous tree"/"attenuation", "inevitable discovery," and gun–crime sentencing. State v. McReynolds, 117 Wn. App. 309 (Div. III, 2003) – Oct 03:14

"Same criminal conduct" gets narrow, pro–prosecution interpretation in child pornography sentencing. State v. Ehli, 115 Wn. App. 556 (Div. III, 2003) – Oct 03:20

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

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

Statute on sex offender registration and community notification survives constitutional challenge on due process, liberty and privacy grounds. Personal Restraint Petition of Douglas Earl Meyer, 142 Wn.2d 608 (2001) – Feb 01:02

In failure–to–register case, sex offender must be allowed to put on evidence alleging faulty filing practices in sheriff's office. State v. Prestegard, 108 Wn. App. 14 (Div. II, 2001) – Feb 02:18

No "ex post facto" problem under Alaska's "Megan's Law" in putting sex offenders' names, photos, descriptions and addresses on internet. Smith v. Doe, 123 S.Ct. 1140 (2003) – May 03:03

No due process problem under Connecticut's "Megan's Law" in not giving sex offenders pre–deprivation hearings before putting their names, addresses, pictures and descriptions on the internet. Connecticut Department of Public Safety v. Doe, 123 S.Ct. 1160 (2003) – May 03:03

SEX PREDATORS

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

SEXUAL EXPLOITATION (RCW 9.68A.040)

Washington's "sexual exploitation of a minor" statute survives constitutional challenge in "show me your breasts" high school videotaping case. State v. D.H., 102 Wn. App. 620 (Div. I, 2000) – Jan 01:18

SIXTH AMENDMENT AND RELATED COURT RULE PROTECTIONS

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

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

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

Sixth Amendment right to counsel – including its post–arraignment, "initiation of contact" bar – does not extend to other crimes, even to closely related crimes. Texas v. Cobb, 532 U.S. 162 (2001) – June 01:02

Showup ID probably unlawful because request for an attorney by an arrestee was not timely honored per court rule (CrR 3.1), but error held harmless. State v. Jaquez, 105 Wn. App. 699 (Div. II, 2001) – Aug 01:18

For BAC test on DUI arrestee to be admissible, a prior warning of the right to counsel under CrR 3.1 or CrRLJ 3.1 must advise of right to counsel "at this time". State v. Templeton, 107 Wn. App. 141 (Div. I, 2001) – Sept 01:12

No Sixth Amendment violation by officers in taking uncounseled statement from represented defendant on charged matter, because defendant was the person who initiated the contact. State v. Erickson, 108 Wn. App. 732 (Div. III, 2001) – Dec 01:17

SPEEDY TRIAL/SPEEDY ARRAIGNMENT

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

Under Striker–speedy–trial–speedy–arraignment rule, all crimes arising from same episode have same time lines unless state satisfies good faith, due diligence exception in relation to delay in charging based on delayed receipt of lab report. State v. Ross, 98 Wn. App. 1 (Div. II, 1999) – Feb 00:20. Opinion amended; see 990 P.2d 962 (Div. II, 1999)

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

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

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

Striker/Greenwood speedy trial/speedy arraignment rule violated where one county did not do enough to try to arraign defendant who was in another county's jail. State v. Huffmeyer, 102 Wn. App. 121 (Div. II, 2000) – Nov 00:19 Affirmed by the Washington Supreme Court; see below, this topic.

Striker/Greenwood CrR 3.1 speedy trial period runs while defendant is in another county's jail awaiting sentencing following a guilty plea there. State v. Huffmeyer, 145 Wn.2d 52 (2001) – Jan 02:04

Striker/Greenwood speedy trial rule not violated in vehicular assault prosecution, even though state could have obtained defendant's current address earlier from court papers on a separate DUI incident. State v. Hilderbrandt, 109 Wn. App. 46 (Div. III, 2001) – Jan 02:20

Idaho resident who commuted into Washington to work, but did not spend his nights in Washington, was not a Washington resident for purposes of the Striker/Greenwood speedy trial/speedy arraignment rule; also, evidence supports felony–eluding conviction. State v. Treat, 109 Wn. App. 419 (Div. III, 2001) – March 02:18

Speedy trial/speedy arraignment rule of Striker/Greenwood violated where prosecution was delayed on one of the two crimes arising from same criminal episode. State v. Kindsvogel, 110 Wn. App. 750 (Div. III, 2002) – Sept 02:21 Reversed by the Washington Supreme Court; see below, this topic.

Speedy trial/speedy arraignment rule not violated where marijuana–growing prosecution was delayed after defendant was arraigned on DV assault charge, despite fact police learned about both crimes during same DV police response. State v. Kindsvogel, 149 Wn.2d 477 (2003) – Sept 03:11

STALKING (RCW 9A.46.110)

Stalking evidence sufficient to convict park–and–watch defendant; also, stalking statute, though broad, is not unconstitutionally vague. State v. Ainslie, 103 Wn. App. 1 (Div. I, 2000) – Jan 01:06

STANDING

See topic of "Search and Seizure" under subtopic "Standing"

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

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

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

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

Theft (from mom) by deception – evidence sufficient to convict. State v. Mora, 110 Wn. App. 850 (Div. III, 2002) – Sept 02:15

Theft convictions against escrow company president upheld. State v. Grimes, 110 Wn. App. 272 (Div. I, 2002) – Sept 02:16

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

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

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

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

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

"Felony eluding" statute (RCW 46.61.024) does not apply where pursuing police vehicle not marked on sides with identifying lettering or logo. State v. Ritts, 94 Wn. App. 784 (Div. III, 1999) – June 99:16 Note: The 2003 Washington Legislature amended RCW 46.61.024 by deleting the "appropriately marked" clause and replacing it with the clause "equipped with lights and sirens." See July 2003 **LED**:02.

14–year–old's lack of driver's license insufficient, alone, to support charge under "disregard for safety" variation of vehicular homicide statute. State v. Lopez, 93 Wn. App. 619 (Div. III, 1999) – June 99:17

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

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

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

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

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

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

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

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

Police bicycle can be "police vehicle" under "felony eluding" statute at RCW 46.61.024. State v. Refuerzo, 102 Wn. App. 341 (Div. I, 2000) – Nov 00:11

"Appropriately marked" phrase in felony–eluding statute requires that police vehicle bear some insignia identifying it as official police vehicle. State v. Argueta, 107 Wn. App. 532 (Div. I, 2001) – Nov 01:10 16 Note: The 2003 Washington Legislature amended RCW 46.61.024 by deleting the "appropriately marked" clause and replacing it with the clause "equipped with lights and sirens." See July 2003 **LED**:02.

Citizen's intentional act of driving off from traffic stop with officer hanging from driver–side window was "accident" for purposes of hit–and–run statute. State v. Silva, 106 Wn. App. 586 (Div. I, 2001) – Jan 02:19

In "physical control" prosecution, affirmative defense for moving motor vehicle off the roadway not applicable if someone else does the moving. State v. Votava, 109 Wn. App. 529 (Div. III, 2001) – March 02:17. Reversed by the Washington Supreme Court; see below, this topic.

Expert testimony that defendant was in "crash phase" of meth intoxication at time of accident helps to support conviction for vehicular assault. State v. McNeal, 145 Wn.2d 253 (2002) – April 02:14

Under "physical control" statute's defense for moving vehicle off roadway, defendant need not have moved vehicle while intoxicated. Belasco v. City of Tacoma, 114 Wn. App. 211 (Div. II, 2002) – Jan 03:12

Under "safely off the roadway" defense to charge of "physical control," the defendant need not be the person who did the moving. State v. Votava, 149 Wn.2d 178 (2003) – Aug 03:10

DOL's sending of license suspension notice to address shown on most recent traffic ticket meets constitutional due process (notice) requirement. City of Redmond v. Arroyo–Murillo, 149 Wn.2d 607 (2003) – Aug 03:11

"Reckless" in vehicular assault statute means driving "in a rash or heedless manner, indifferent to the consequences"; also, double jeopardy protections do not preclude multiple convictions based on multiple victims in a singular vehicular assault incident. State v. Clark, 117 Wn. App. 281 (Div. II, 2003) – Oct 03:13 Status: Review was pending in the Washington Supreme Court as of December 2003.

TRESPASS (Chapter 9A.52 RCW)

Criminal trespass at public housing facilities – if there are no lease provisions to contrary, a previously "trespassed" guest has a limited right to be on premises at tenant's invitation. State v. Blunt, 146 Wn.2d 561 (2002) – Aug 02:03

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Where charges were possession of drug paraphernalia and possession of marijuana, defendant entitled to put on evidence of his reputation for not using drugs. State v. Day, 142 Wn.2d 1 (2000) – Jan 01:03

Multiple convictions justified for multiple marijuana grows located in different places. State v. Davis, 142 Wn.2d 165 (2000) – Jan 01:05

"Drug house" evidence held insufficient to support conviction. State v. Ceglowski, 103 Wn. App. 346 (Div. II, 2000) – Jan 01:09

Fingerprints on meth "box lab" items supports conviction for manufacturing, but this evidence alone does not support conviction for possessing with intent to deliver. State v. Todd, 101 Wn. App. 945 (Div. III, 2000) – Jan 01:11

Civil asset forfeiture hearing, delayed to accommodate related criminal trial, held to be timely under UCSA; also, PC test met; and wife's "innocent owner" defense rejected. Escamilla v. Tri–City Metro Drug Task Force, 100 Wn. App. 742 (Div. III, 2000) – Jan 01:15

No "medical necessity" defense under federal drug laws. U.S. v. Oakland Cannabis Buyers' Cooperative, 121 S.Ct. 1711 (2001) – Aug 01:08

Possessing "pseudoephedephrine hydrochloride" is not prohibited by RCW 69.50.440. State v. Halsten, 108 Wn. App. 759 (Div. II, 2001) – Dec 01:19

Where the only evidence of delivery was the heroin seller's confession, the corpus delicti of "delivery of drugs by someone" was not met in fatal heroin O.D. case. State v. Bernal, 109 Wn. App. 150 (Div. II, 2001) – Feb 02:05

Medical marijuana law gets first reading – defendant fails to meet standards for 1) "valid documentation" or 2) "60–day supply." State v. Shepherd, 110 Wn. App. 544 (Div. III, 2002) – May 02:08

Forfeiture hearing was timely, but $58,300 cash in girlfriend's car was not subject to forfeiture under RCW 69.50.505, because there was no PC as to illegal–drugs connection (drug–sniffing dog's alert to cash must be discounted on this record). Valerio v. Lacey Police Department, 110 Wn. App. 163 (Div. II, 2002) – May 02:12

Evidence discovered during traffic stop held sufficient to support convictions for 1) manufacturing meth and 2) possessing meth with intent to manufacture or deliver. State v. McPherson, 111 Wn. App. 747 (Div. III, 2002) – Aug 02:22

Drug evidence discovered during traffic stop held sufficient to support convictions for 1) possessing meth with intent to deliver and 2) manufacturing meth. State v. Zunker, 112 Wn. App. 130 (Div. III, 2002) – Aug 02:23

Lack of medical license is not an element of the crime of unlawful delivery of legend drugs in violation of RCW 69.41.030. State v. Clausing, 147 Wn.2d 620 (2002) – Feb 03:08

State prevails on issues of: 1) no privacy in garbage can at neighboring abandoned house; 2) voluntariness of confession; 3) sufficiency of evidence re meth manufacturing; and 4) sufficiency of evidence re reckless burning. State v. Hepton, 113 Wn. App. 673 (Div. III, 2002) – Feb 03:15

Prescription drug records may, per Washington state statute and per federal and state constitutions, be inspected by pharmacy board or law officers, and that information may be passed on to prosecutor. Murphy v. State, 115 Wn. App. 297 (Div. I, 2003) – April 03:20

Thein residence–nexus probable cause test met for search of outdoor marijuana grower's residence; also, trial court was required to impose mandatory $1000 fine under RCW 69.50.430(1). State v. Cowin, 116 Wn. App. 752 (Div. II, 2003) – Aug 03:14

"Medical use of marijuana act": qualified patient's after-the-fact designation of person as "primary caregiver" does not meet statutory requirement. State v. Phelps, 118 Wn. App. 740 (Div. II, 2003) – Dec 03:18

UNLAWFUL ISSUANCE OF BANK CHECKS (Chapter 9A.56 RCW)

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

VAGUENESS DOCTRINE

Word "profane" in Bellevue phone harassment ordinance not unconstitutional. Bellevue v. Lorang, 92 Wn. App. 186 (Div. I, 1998) – April 99:14 Reversed by the Washington Supreme Court; see below, this topic.

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

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

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

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

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

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

Stalking evidence sufficient to convict park–and–watch defendant; also, stalking statute, though broad, is not unconstitutionally vague. State v. Ainslie, 103 Wn. App. 1 (Div. I, 2000) – Jan 01:06

City of Sumner juvenile curfew ordinance invalidated for vagueness in violation of federal constitutional due process protections. City of Sumner v. Walsh, 148 Wn.2d 490 (2002) – April 03:14

Adult cabaret ordinance held constitutional in free speech, voidness attack. Heesan Corporation v. City of Lakewood, 118 Wn. App. 341 (Div. II, 2003) – Dec 03:23

VIENNA CONVENTION AND CONSULAR NOTIFICATION

When foreign nationals are subjected to custodial arrest in the U.S., the arrestees should be advised of the right to seek assistance from their consulates; where the foreign country is a "mandatory notification country," the consulate must be notified of the arrest despite the arrestee's wishes. Article on Vienna Convention on Consular Relations. – May 99:18. Note: There is now a link to the State Department information on CJTC's **LED** webpage.

"Vienna Convention Rights" violation may result in suppression of confession. U.S. v. Lombera–Camorlinga, 170 F.3d 1241 (9th Cir. 1999) – June 99:03 The 9th Circuit later withdrew this opinion and issued a revised opinion. See below, this topic.

No exclusion of confession for violating Vienna Convention requirement that police tell arrested foreign national of right to consulate notification. U.S. v. Lombera–Camorlinga, 206 F.3d 882 (9th Cir. 2000) – May 00:12

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

No exclusion of confession for violation of Vienna convention treaty requirement that officers tell arrested foreign national of right to consulate notification. State v. Jamison and State v. Acosta, 105 Wn. App. 572 (Div. I, 2001) – Aug 01:18

Note: Update on Vienna convention on consular relations. Dec 01:20

VOYEURISM (RCW 9A.44.115)

Up–skirt photographing at mall punishable under voyeurism statute. State v. Glas, 106 Wn. App. 895 (Div. III, 2001) – Nov 01:19 Reversed by the Washington Supreme Court; see below, this topic.

Up–skirt videotaping and photographing in public places such as shopping malls does not violate state voyeurism statute. State v. Glas, 147 Wn.2d 410 (2002) – Nov 02:03 In 2003, the Washington Legislature amended the relevant language in the voyeurism statute to close the Glas loophole. See **July 2003 LED:11**.