LEGAL UPDATE FOR WASHINGTON LAW ENFORCEMENT

Law Enforcement Officers: ***Thank you for your service, protection and sacrifice***

AUGUST 2024

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NINTH CIRCUIT OF THE UNITED STATES COURT OF APPEALS

CIVIL RIGHTS ACT SECTION 1983 CIVIL LIABILITY FOR LAW ENFORCEMENT: 3-JUDGE PANEL HOLDS THAT OFFICERS ARE NOT ENTITLED TO QUALIFIED IMMUNITY ON PLAINTIFFS' FOURTH AMENDMENT CLAIM BECAUSE, VIEWING THE FACTS IN THE LIGHT MOST FAVORABLE TO PLAINTIFFS, NINTH CIRCUIT CASE LAW HAS ESTABLISHED THAT OFFICERS CAN BE HELD LIABLE FOR CONDUCTING A HIGH-RISK FELONY VEHICLE STOP BASED ON NOTHING MORE THAN REASONABLE SUSPICION THAT A VEHICLE WAS STOLEN

In Chinaryan v. City of Los Angeles, ___ F.4th ___ , 2024 WL ___ (9th Cir., August 14, 2024), a three-judge Ninth Circuit panel makes a number of rulings in a section 1983 Civil Rights Act lawsuit. One of the rulings by the Ninth Circuit panel is that the U.S. District Court erred in granting qualified immunity to officers who conducted a high-risk felony vehicle stop based only on reasonable suspicion that the vehicle was stolen.

The Chinaryan panel rules that it was clearly established in the Ninth Circuit decisions in Washington v. Lambert, 98 F.3d 1181 (9th Cir. 1996), and Green v. City & County of San Francisco, 751 F.3d 1039 (9th Cir. 2014), that officers can be held liable for conducting a high-risk vehicle stop where the stop was based on nothing more than a reasonable suspicion that the vehicle was stolen.

The first paragraph of the lead Opinion for the Ninth Circuit panel provides a brief summary of the unusual facts of this case:

> Hasmik Chinaryan was driving home from a family celebration with her teenage daughter and a friend when a police officer saw her and mistakenly suspected that she was driving a stolen vehicle. The mix-up was due to several unfortunate coincidences, including an error by the Department of Motor Vehicles ("DMV"), which had issued the wrong license plates. Although Chinaryan drove normally and in compliance with all traffic laws while being followed by a police car for more than ten minutes, officers from the Los Angeles Police Department ("LAPD") decided to conduct a "high-risk" felony stop involving about a dozen officers and a helicopter unit. The officers ordered Chinaryan out of the vehicle at gunpoint and commanded her to lie prone on the street with her arms outstretched. The officers, again at gunpoint, ordered the passengers out of the vehicle with their hands in the air. All three were handcuffed and seated on the street while the officers investigated.

The Ninth Circuit's Chinaryan Opinion describes in more detail the key facts of the case:

A. The stolen vehicle

On June 14, 2019, a black Chevrolet Suburban limousine was stolen while parked on the street overnight. The following evening, a helicopter unit in LAPD's Foothill Division detected a signal from the vehicle's LoJack device. Officers Ramiro Gonzalez and Mario Meneses, investigating on the ground, located the signal's approximate source. LoJack signals are not as accurate as GPS, but Gonzalez was confident that the signal originated from no more than two or three businesses away from his location on Glenoaks Boulevard—an industrial area with many "chop shops" that take parts off vehicles.1 He reported the incident to his supervisor, Sergeant Fred Cueto. Because businesses were closed for the weekend, they planned to return to the location to recover the car on Monday.

B. Officers pursue Chinaryan's vehicle

The following day, on June 16, 2019, Hasmik Chinaryan was driving her daughter ("NEC") and their friend, Mariana Manukyan, from a Father's Day gathering in North Hollywood back to their home in Tujunga—a 15-minute drive. Their vehicle, which belonged to Chinaryan's husband, Levon Chinaryan, was also a black Suburban limousine. Both Suburbans were late model vehicles—the stolen one from 2015 and Chinaryan's from 2018—and they looked very similar.

Sergeant Cueto saw Chinaryan's vehicle on Glenoaks at Tuxford Street, less than half a mile from where the stolen Suburban's LoJack signal had been detected. Thinking, "what are the chances," Cueto radioed Chinaryan's license plate number to the communications unit and requested DMV information for her vehicle. The communications unit informed him that the license plate belonged to a Dodge Ram and gave him information regarding the registered owner. The Dodge Ram had not been reported stolen. Cueto suspected that the Suburban had been stolen because it was "cold-plated," i.e., had a license plate other than the one registered with DMV. He called for backup, including a helicopter unit.

Cueto followed plaintiffs for about 10 minutes, during which time Chinaryan did not exceed the speed limit, drive evasively, or violate any traffic laws. Although it was still daytime, Cueto could not see inside Chinaryan's vehicle because it had heavily tinted windows.

As Cueto followed Chinaryan down Foothill Boulevard, Officers Gonzalez and Meneses approached in their vehicle from the opposite direction. As Meneses drove past Chinaryan's vehicle, Gonzalez saw her and Manukyan through the front windshield. The LoJack receiver in Gonzalez and Meneses's vehicle did not register a signal, but Gonzalez could not be sure they had the wrong vehicle because car thieves can disable LoJack systems.

Gonzalez informed Cueto by radio that he had seen two people in the front of the car. Meneses made a U-turn and began following plaintiffs directly behind their vehicle. At that point, approximately a dozen officers were in pursuit.

C. Officers stop Chinaryan's vehicle and handcuff the three occupants

Chinaryan "saw many, many . . . officer cars" and heard helicopters. Believing the officers "[were] after . . . some criminal," she activated her turn signal and pulled to the

side of the road to let them pass. As she did so, the officers activated their sirens. The officers "yell[ed] louder and louder to get out of the car," and Chinaryan realized they were stopping her.

Officer Meneses ordered Chinaryan to turn off the vehicle, throw her keys outside, step out of the car, and keep her hands up. Chinaryan exited the vehicle as Meneses and several other officers pointed their pistols at her or in her direction.3 Meneses ordered Chinaryan to walk away from the vehicle into the rightmost lane, lie down on her stomach, put her hands out "like a plane," and turn her head to the side, facing away from the vehicle, with her cheek touching the ground.

Chinaryan was "extremely scared" and heard NEC crying inside the vehicle. She remained prone on the ground for about three minutes and twenty-five seconds while the officers cleared the car, after which they holstered their weapons and handcuffed her.

Meanwhile, Officer Gonzalez ordered NEC and Manukyan to exit the passenger doors, one at a time. As they did so, Gonzalez and Officer Eduardo Piche pointed firearms in their direction—Gonzalez his AR15 high-capacity police patrol rifle, and Piche his loaded 12-gauge shotgun. The officers ordered them to walk about 15–20 steps backwards (Manukyan in heels), where Officer Airan Potter handcuffed them. NEC cried and urinated on herself "because [she] was so scared."

D. Officers investigate Chinaryan's vehicle

After Chinaryan, NEC, and Manukyan were in handcuffs, Officer Gonzalez racked his rifle. He and Officer Zachary Neighbors located the Suburban's Vehicle Identification Number ("VIN")—Gonzalez on the driver door frame, and Neighbors on the windshield plate—and the officers independently checked the VIN on their car computers. They learned from DMV records that the VIN belonged to a 2018 Suburban registered to Levon Chinaryan with a license plate that differed by one digit from the license plates on the stopped vehicle. The vehicle had not been reported stolen.

Sergeant Cueto walked over to Chinaryan and explained that he had stopped her because her "license plate comes back to a Dodge Ram." Chinaryan told him that the car belonged to her husband, Levon Chinaryan, who had bought it less than three months earlier. She told Cueto their home address. Sergeant Cueto returned to the front of the Suburban, where Officer Jeff Rood told him: "All the VINs match." Eventually, Cueto directed officers to remove the handcuffs on Chinaryan, NEC, and Manukyan. The officers removed the plates from the Suburban, completed paperwork, and instructed Chinaryan that she or her husband would need to contact DMV about new plates.

The entire incident, from the time the officers stopped Chinaryan's vehicle to the time she and her passengers were released, lasted 24 minutes.

In key part, the Chinaryan Opinion's legal basis is as follows for the ruling that a jury could reasonably find that a high-risk felony stop was not justified on the facts alleged in this case:

The officers had no information that plaintiffs were "currently armed" or that "a crime that may involve violence [was] about to occur." . . . Nor was this a situation "where the stop closely follow[ed] a violent crime." . . . The owner of the stolen Suburban was not even

present when his vehicle was taken, and the theft took place two nights before the officers encountered plaintiffs. Even if plaintiffs' vehicle had been the stolen one, as the officers suspected, the passage of time gave rise to the possibility that the occupants were unconnected to the crime. Further, any safety-based justification to restrain plaintiffs in handcuffs weakened considerably once the DMV error became apparent and the officers ascertained that plaintiffs were cooperative and unarmed. Yet plaintiffs were inexplicably restrained for several additional minutes.

Construing the facts in the light most favorable to plaintiffs, the officers' reasonable suspicion that plaintiffs had stolen the Suburban, standing alone, was "not enough to justify such intrusive tactics." . . . Therefore, the officers are entitled to qualified immunity only if it was unclear that employing the tactics violated plaintiffs' Fourth Amendment rights.

Result: Reversal of order of the U.S. District Court (Central District of California) granting qualified immunity to the officers who were involved in the high-risk felony stop of Plaintiffs.

CIVIL RIGHTS ACT SECTION 1983 CIVIL LIABILITY FOR LAW ENFORCEMENT: 3-JUDGE PANEL RULES THAT OFFICERS DID NOT USE EXCESSIVE FORCE WHEN THEY SHOT PLAINTIFF MULTIPLE TIMES FOLLOWING A 42-MINUTE CAR CHASE, AT THE END OF WHICH PLAINTIFF WAS STILL TRYING TO FLEE AND POSED A CONTINUING GRAVE PUBLIC SAFETY RISK

In Williams v. City of Sparks (NV), __ F.4th __ , 2024 WL __ (9th Cir., August 9, 2024), a three-judge Ninth Circuit panel reverses the U.S. District Court's denial of qualified immunity to law enforcement officers who shot Plaintiff multiple times at the end of a 42-minute car chase, at which point the Plaintiff was still trying to flee and continued to pose a grave public safety risk. The ruling of the Ninth Circuit panel is made under the balancing test and analytical framework of Graham v. Connor, 490 U.S. 386, 397 (1989).

A Ninth Circuit staff summary of the Opinion (which is not part of the Opinion) provides the following brief synopsis of the Opinion:

The panel first determined that it had jurisdiction over this interlocutory appeal because where, as here, defendants contend on appeal that the district court failed to review the facts in the light depicted in a video recording, they raise a question of law over which the appellate court has jurisdiction.

The panel next determined that the video evidence clearly contradicted Plaintiff's claim that he was not attempting to accelerate once police officers blocked his truck with their police cars. Given the video evidence, the officers were entitled to qualified immunity on the excessive force claim because their actions were objectively reasonable.

As in [Plumhoff v. Rickard, 572 U.S. 765 (2014)], Plaintiff posed a threat to the officers on the scene and the public at large. Plaintiff led officers on a chase that lasted forty-two minutes and reached speeds of around 70 miles per hour. During the chase, he ran several red lights, weaved between lanes, drove through a chain-link fence, drove in the wrong direction on the freeway, albeit briefly, and had, for a significant portion of the chase, his lights off and a blown tire.

> By the time his truck was pinned, he had struck three patrol vehicles. As in Plumhoff, Plaintiff continued his attempt to flee [even after his truck was pinned]. Taking into account the duration, speed, and other hazards of plaintiff's flight, as well as his clear intent to flee, he posed a grave public safety risk and police acted reasonably in using deadly force to end that risk.
>
> Exercising pendent jurisdiction over [Plaintiff's claims of the City's separate liability under [Monell v. Department of Social Services, 436 U.S. 658 (1978)] and the state battery claims, the panel held that the Monell claims failed as a matter of law because there was no constitutional violation in the officers' use of force, and the battery claim failed because the use of force was not unreasonable.

[Some paragraphing revised for readability]

The Williams Opinion includes the following description of the facts:

> On May 5, 2020, at around 12:10 AM, SPD dispatch received a 911 call from a gas station that a male suspect had stolen alcohol and was "vandalizing" a vehicle in the parking lot. Dispatch requested an officer response for "larceny" and advised that the suspect did not appear to have a weapon. Officers Taylor and Colborn were dispatched, and Officer Colborn arrived at the gas station at approximately 12:14 AM. Officer Colborn pulled behind Williams's truck and activated his overhead lights. Williams fled in his truck.
>
> Colborn pursued Williams with his siren and overhead lights active. Colborn radioed other officers about the pursuit, noting that Williams was driving between 30 and 45 miles per hour and that there was no pedestrian traffic on the road. At several points, Williams slowed his truck to a stop, waited briefly, and then continued fleeing. He also ran multiple red lights. During this time, SPD dispatch informed the officers of Williams's identity, residence, and criminal history of "battery with a deadly weapon and eluding."
>
> Around four minutes into the pursuit, Williams drove his truck into a dead-end street and stopped his truck. The officers exited their patrol vehicles and shouted for Williams to step out of his vehicle and to keep his hands up. Williams refused to exit the vehicle.
>
> For over ten minutes, the officers attempted to reason with Williams and have him exit his vehicle. Williams began yelling at the officers, revved the engine of his truck, and drove through a chain-link fence to flee the area. The officers continued their pursuit of Williams.
>
> The officers attempted a pursuit intervention (PIT) maneuver on Williams's truck as he turned onto a major road. His truck spun around and accelerated past the officers, turning back onto the major road. Williams continued fleeing the officers for several minutes.
>
> He ran two more red lights with his speed ranging from about 35 to 50 miles per hour. During this time, Colborn reported "no traffic" on the roads. Eventually, Williams ran a third red light and turned onto the freeway. The freeway had light traffic going in the opposite direction. Williams's speed ranged between 55 and 70 miles per hour.

The pursuit continued on or near the freeway for around twenty minutes. Officers deployed spike strips, which dispatch confirmed were "effective" in puncturing the front passenger tire of Williams's truck.

Although still fleeing, Williams slowed down to about 50 miles per hour. Williams continued driving on the freeway, swerving between lanes at speeds of about 35 to 45 miles per hour. Officers attempted another PIT maneuver on Williams's truck, but it was unsuccessful. Williams exited the freeway and ran two stop signs before turning back onto the freeway. By that point in time, Williams was driving on a flat tire, without any lights on, and briefly on the wrong side of the freeway before crossing the dirt median onto the correct side.

Colborn drove up to the rear driver side of Williams's truck but had to back off when Williams suddenly braked and turned toward Colborn's patrol vehicle. Colborn radioed in that Williams had "just tried to ram [him]." Williams continued driving, weaving between lanes and with sparks coming from the truck's punctured wheel. Officers then performed a successful PIT maneuver, causing the truck to spin around and enter the ditch separating eastbound and westbound traffic.

Williams continued driving, now in the direction of the officers. The rear passenger wheel of his truck ran over the hood of Colborn's patrol vehicle. Then, the back of his truck hit the front of Officer Bare's vehicle. Williams came to a stop once Officer Janning wedged his patrol vehicle underneath the truck, pinning it against Officer Terrasas's patrol vehicle. After Williams's truck stopped moving, Officer Gibson positioned his patrol vehicle next to Janning's, in front of and facing the truck. Williams was effectively boxed in by Janning, Gibson, and Terrasas.

The truck's engine then made a loud, continuous noise, and a cloud of dirt and debris formed near the back of the truck. Colborn, Gibson, Janning, Taylor, and Terrasas all exited their vehicles and shouted commands, including "Stop the car!", while firing dozens of rounds into the cabin of the truck. Gibson fired his rounds from behind the back bumper of his patrol vehicle; Janning fired his rounds from behind his patrol vehicle; Colborn fired his rounds from behind Williams's truck; Taylor fired his rounds while taking cover from behind his patrol vehicle; and Terrasas fired his rounds as he walked from his patrol vehicle toward the truck's rear passenger corner.

The officers continued firing for approximately 14 seconds, during which Williams's engine continued making a loud noise. Several bullets struck and injured Williams. This ended the forty-two-minute chase.

The officers coordinated a plan to get Williams out of the truck. They tried first to deploy a 40-millimeter less-lethal foam launcher to punch out the truck's rear window. However, the window did not break. Terrasas then moved his patrol vehicle away from Williams's passenger door.

Williams opened the passenger door, exchanged words with the officers, and lay down on the ground. Colborn placed Williams in handcuffs and checked where he had been hit. Expedited paramedics then arrived and transported Williams to the hospital.

[Some paragraphing revised for readability]

Result: Reversal of U.S. District Court (Nevada) ruling the denied qualified immunity to the law enforcement officers sued by the Plaintiff.

IN CRIMINAL CASE, NINTH CIRCUIT RULES AGAINST THE GOVERNMENT ON A CURTILAGE ISSUE WHERE AN OFFICER VIOLATED THE PRIVACY RIGHTS OF A HOME'S RESIDENT (1) BY APPROACHING TO ONLY A FOOT FROM THE DEFENDANT'S GARAGE-ATTACHED-TO-RESIDENCE, AND (2) AT THAT POINT, SPOTTED IN OPEN VIEW A PAROLEE-SUSPECT INSIDE THE GARAGE HOLDING A BAGGIE OF DRUGS; THE PAROLE STATUS OF THE PERSON HOLDING THE DRUGS DID NOT JUSTIFY THE INTRUSION ON THE PRIVATE PROPERTY BECAUSE THERE WAS NOT PRIOR PROBABLE CAUSE (AS OPPOSED TO REASONABLE SUSPICION) THAT THE PAROLEE RESIDED THERE

In Chong v. U.S., ___ F.4th ___ , 2024 WL ___ (9th Cir., August 14, 2024), a three-judge Ninth Circuit panel rules that defendant Chong's attorney rendered ineffective counsel in the trial court proceedings by failing to move to suppress evidence based on a claim that Chong's Fourth Amendment rights were violated by the warrantless entry of law enforcement officers to within one foot of the opening of his attached-to-his-home garage during a police investigation.

Law enforcement officers developed information from a federal wiretap that Tran, a state parolee, was violating his parole by being involved in drug distribution activities. The wiretap recorded Tran giving someone directions to the home of Chong, who is Tran's nephew. The officers believed that Tran was currently residing with Chong, but the officers did not have probable cause to support that belief, and it turned out later to have been a mistaken belief.

The officers set up surveillance outside Chong's house. The house had a short driveway and a two-car garage attached to the front of the house facing the street. Tran arrived at the house and walked through the front door of the house. Shortly after that, the garage door opened. At that point, the deputies believed they could conduct a parole search at the home based on Tran's presence there. The Ninth Circuit's Opinion in Chong describes as follows what happened next:

> The deputies, including Deputy Choong Lee, approached Chong's home by entering the next-door neighbor's yard and hopping over the retaining wall and bushes on the left side of the property line. The deputies then crossed the front of Chong's house and approached the open garage by walking between the left-side doorframe and a car parked on the driveway. As they approached the garage door and driveway, they hugged a white lattice fence that partially shielded the front door. As Deputy Lee stood on the driveway, about one foot from the open garage door, he saw Tran at a coffee table in the garage with two other men. On seeing Deputy Lee, Tran appeared startled and tossed a baggie of methamphetamine onto the table in front of him. The deputies subsequently detained Tran and seized the baggie.
>
> . . . .
>
> The deputies then conducted a protective sweep of the house, finding a large amount of cash in the living room. After the house was secured, a little after 11:00 p.m., the deputies obtained a search warrant for the house. Deputies then found large amounts of ecstasy, methamphetamine, cocaine, and marijuana; three guns; ammunition; and digital scales. Tran and Chong were later charged with federal drug and gun offenses.

Chong's attorney moved to suppress the evidence seized from his residence based on a claim that officers were not justified in the officers' belief that Tran, a parolee, resided there, thus justifying a search of a parolee's residence. The U.S. District Court concluded, based on the Ninth Circuit decision in United States v. Grandberry, 730 F.3d 968 (9th Cir. 2013), that the parolee-residence theory was not supportable under the facts. Grandberry explained that for parole searches, "probable cause as to residence exists if an officer of 'reasonable caution' would believe, 'based on the totality of [the] circumstances,' that the parolee lives at a particular residence," and that this standard is "a 'relatively stringent' standard" that requires "'strong evidence' that the parolee resides at the address."

The Ninth Circuit's Chong Opinion impliedly approves of the District Court's reliance on Grandberry in rejecting the parolee-residence theory of the government. The Chong Opinion then goes on to hold that without a warrant, consent, or any exigency, the entry onto the Chong property and approach to within one foot of the attached-to-the-home garage was unreasonable under the Fourth Amendment under both the common-law trespassory/curtilage test of Florida v. Jardines, 569 U.S. 1 (2013) and the more traditional reasonable-expectation-of-privacy test.

The Chong Opinion provides lengthy analysis of each of these Fourth Amendment lines of cases that will not be provided in the Legal Update, but that of course is well worth reviewing.

Result: Reversal of U.S. District Court decision that denied the suppression motion of defendant Chong; case remanded for further proceedings.

IN CRIMINAL CASE, 3-JUDGE NINTH CIRCUIT PANEL REJECTS SECOND AMENDMENT CHALLENGE TO FEDERAL FIREARMS STATUTES THAT PROHIBIT MAKING FALSE STATEMENTS ON ATF FORM 4473 FOR PURCHASING FIREARMS

In U.S. v. Manney, ___ F.4th ___ , 2024 WL ___ (9th Cir., August 19, 2024), a three-judge Ninth Circuit panel rejects the Second Amendment challenge of a defendant who was convicted under federal statutes at 18 U.S.C. §§ 922(a)(6) and 924(a)(2) for making false statements on ATF Form 4473. It was proven at trial that defendant made "straw purchases" of firearms for her son, who is a convicted felon prohibited from possessing firearms.

A Ninth Circuit staff summary (which is not part of the Court's Opinion) provides the following synopsis of the Opinion in Manney:

> The panel affirmed Gail Manney's conviction for violating 18 U.S.C. § 922(a)(6), which makes it a crime for any person in connection with the acquisition or attempted acquisition of any firearm knowingly to make any false or fictitious oral or written statement with respect to any fact material to the lawfulness of the sale of such firearm.
>
> The panel rejected Manney's argument that § 922(a)(6), as applied to the facts of her case, violates the Second Amendment. Because the Second Amendment does not protect an individual's false statements, the conduct that § 922(a)(6) regulates falls outside the scope of the Second Amendment's plain text.
>
> The panel also rejected Manney's contention that her false statement was not "material" under § 922(a)(6). This contention is foreclosed by Abramski v. United States, 573 U.S. 169 (2014), which held that a false statement regarding the actual purchaser of a firearm

was "material" under § 922(a)(6) even if the actual purchaser could legally possess a firearm.

Result: Affirmance of conviction by U.S. District Court (Nevada) of Gail Manney for violation of 18 U.S.C. §§ 922(a)(6) and 924(a)(2) for making false statements on ATF Form 4473.

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WASHINGTON STATE COURT OF APPEALS

DEFENDANT IS HELD TO HAVE CLEARLY INVOKED HIS RIGHT TO AN ATTORNEY AT THE POINT IN A CUSTODIAL INTERROGATION WHEN HE SAID "I'M GOING TO HAVE TO ASK FOR LEGAL REPRESENTATION, NOT OUT OF RESISTANCE"; IT DOES NOT HELP THE STATE'S ARGUMENT THAT THE CONTEXT KNOWN TO THE QUESTIONING OFFICERS – WHO CONTINUED THE INTERROGATION DESPITE DEFENDANT'S ABOVE-QUOTED STATEMENT – WAS THE FOLLOWING: (1) HE HAD EARLIER WAIVED MIRANDA; (2) HE HAD EARLIER ADMITTED THE SHOOTING TO POLICE AND OTHERS SHORTLY AFTER HIS INITIAL WAIVER; AND (3) HIS STATEMENT ASKING FOR "LEGAL REPRESENTATION" MAY HAVE BEEN BUILDING TO HIS LATER QUESTION TO OFFICERS ABOUT HOW LONG IT WOULD TAKE TO GET A LAWYER

In State v. Wilson, ___ Wn. App. 2d ___ , 2024 WL (Div. I, August 5, 2024), Division One of the Court of Appeals reverses the first degree murder conviction of defendant on grounds that (1) a statement made by defendant during a custodial law enforcement interrogation was an unequivocal invocation of his Miranda right to an attorney, and (2) statements that defendant made after that statement in the custodial interrogation should have been suppressed by the trial court. The opening section of the Opinion for Division One of the Court of Appeals summarizes the ruling of the Court as follows:

> Wendell Wilson appeals his criminal conviction for shooting and killing Lila Wilson, asserting that during a police interrogation he unequivocally invoked his right to counsel under Miranda v. Arizona, 384 U.S. 436, 86 S. Ct. 1602, 16 L. Ed. 2d 694 (1966). We conclude he did.
>
> Wilson stated, "I'm going to have to ask for legal representation" – words that courts have regularly found to constitute an unequivocal invocation of Miranda rights. The State argues Wilson's use of those words was not unequivocal, because the context known to the questioning officers was that Wilson had already waived Miranda once, he had already admitted the shooting to police and others, and his reference to counsel was building to a question about how long it would take to get a lawyer.
>
> We hold the context did not confound Wilson's clear request for a lawyer, his statements in the interrogation were required to be suppressed, and the admission of his statements at trial was not harmless beyond a reasonable doubt. We reverse Wilson's conviction and remand.

[Some paragraphing revised for readability]

The Court of Appeals describes as follows the facts of the case that relate to the Miranda arguments for defendant and for the State (the bolded and underlined answer of the defendant

that is bolded and underlined is determined by the Court of Appeals to be the pivotal, Miranda-invoking statement of defendant in this case):

> Before he made the statements challenged on appeal, Wilson described certain facts of the shooting in a series of calls to his ex-wife Gay Horton and 911, and then to police officers responding to the scene.
>
> Horton testified that on June 10, 2019, Wilson and Horton spoke over the phone three times. Scene photos showed officers found a handwritten address book open to a page showing Horton's address and phone number.
>
> In the first phone call, Wilson called Horton and angrily said, "'I'm going to kill Lila.'" Lila Wilson was Wilson's adult daughter, and lived in an apartment with Wilson, her husband, and her then-14-month-old son, S. Because of Wilson's history of arguments with Lila Wilson, Horton did not take the threat seriously and responded, "'Okay, what did she do now?'" Wilson hung up. Horton called him back after about three minutes, and Wilson said, "'I killed Lila. I shot her.'" Horton testified his demeanor and tone changed during this second call, because he was breathing really hard and may have been in shock.
>
> Horton could not remember where the break was between the second and third calls, but they were very close in time, and she recalls asking more details about what was going on. At Horton's request, Wilson indicated he would call 911.
>
> Wilson informed the 911 operator that he needed social services for a baby because he "'just killed her – the baby's mother'" using a gun. When the 911 operator asked why he shot the mother, Wilson stated, "'She's been given – we've been having a lot of arguments and today it just finally got totally out of hand.'"
>
> The argument centered on putting up a baby fence in the kitchen. The 911 audio ends after approximately six minutes with the arrival of police directing Wilson to put his "hands up" and put "the child down."
>
> [Officer A] responded to Wilson's 911 call and was one of the first officers to come into contact with him. [Officer A's] interactions with Wilson were partially captured on his patrol car's dashboard video camera.
>
> The first minute of the dashcam video captures [Officer A's] instructions, heard at the end of the 911 call, to Wilson to put his hands up and the child down, followed by officers taking Wilson into custody outside the apartment. A pretrial exhibit of an extended version of this video included [Officer A] reading Wilson his Miranda rights.
>
> Wilson waived his rights and agreed to speak with the officer. As to time, [Detective B] testified at the CrR 3.5 hearing that he heard about the incident at approximately 5:00 p.m.
>
> Responding authorities found the gun and, inside the apartment, a deceased person later identified as Lila Wilson, who had been shot several times. Wilson told [Officer A] the location of the gun and described an argument about installing a baby gate in the kitchen for S. as the reason he shot her.

Wilson stated Lila Wilson did not want to hear about his opinion that S. would pull the gate down and hurt himself, “then she started to escalate,” she said, “I’m leaving right now. I’m [sic] just want to go,” and then she went into the bedroom and slammed the door in Wilson’s face.

After that, “I went and got my gun, and I shot her,” “several times, several places.” When asked if the gun was locked, Wilson responded, “No . . . it was up in the closet, way up on the shelf totally out of reach of any children.”

[Officer A] believed it was Lila Wilson’s room where Wilson retrieved the gun. [Officer A] testified he believed he asked Wilson if he intended to kill Lila Wilson and believed Wilson said he did. [Officer A] described Wilson’s demeanor at the scene as “very calm” and “polite.” After approximately 20 minutes, [Officer A] arrested Wilson. The dashcam video continues for approximately four more minutes. Another, 13-minute video shows Wilson being transported to the police station.

The interrogation video shows Wilson entering an interview room with [Detective B] at 5:43 p.m. In the first minute of the video, Wilson asks for confirmation that [Detective B] is a detective. Within approximately another minute, [Detective C] enters the room. The following exchange took place starting at 5:45 p.m. during which Wilson asserts he unequivocally invoked his right to counsel:

“[DETECTIVE B]: All right. So no questions. A little bit of calmness here which is good. So like I told you, . . . I met you at the scene and this is [Detective C]. What we’re here to do is just try to get everybody’s input of what happened. Because, we know we weren’t there, that sort of thing. But before we do that, I know that you were spoken to at the scene by [Officer A]. And you were already given your Miranda rights; right?

MR. WILSON: Correct.

[DETECTIVE B]: Okay. Do you remember understanding those rights?

MR. WILSON: Yes.

[DETECTIVE B]: Okay. . . . [Y]ou’re gonna have to hear them again, because I’m going to read them to you again, just to make sure you understand them. I’m going to read them slow. If you have any questions, just let me know, okay, Wendell? And you’re okay if I call you—

MR. WILSON: Why (cross talk) that’s my name. Wendell is my name.

[DETECTIVE B]: Yeah. Do you want me to call you Mr. Wilson or Wendell?

MR. WILSON: Whichever you’re comfortable with.

[DETECTIVE B]: Okay. Okay. Go ahead.

MR. WILSON: Um . . . I know I can’t afford a lawyer.

[DETECTIVE B]: Okay.

MR. WILSON: So I'm going to have to ask for legal representation, not out of resistance or – or – anything

LEGAL UPDATE EDITOR'S NOTE: The Court of Appeals rules in this case that this statement by defendant to the officer was a clear invocation of the defendant's right to silence, and that at this point, the interrogation should have been ended by the officer.

[DETECTIVE B]: Mm-hmm.

MR. WILSON: But, to get my—I just don't know where—where you stop. Once you start answering questions—

[DETECTIVE B]: Understandable.

MR. WILSON: —then a lawyer becomes real—rather—I mean—

[DETECTIVE B]: Well, yeah.

MR. WILSON: It doesn't help, is what I'm trying to say. How long would it take me to get a lawyer for?

[DETECTIVE B]: Well, you won't have one tonight—

MR. WILSON: Now that's for sure.

[DETECTIVE B]: Yeah, but will you have one. I mean, you're guaranteed one, right?

MR. WILSON: By the law.

[DETECTIVE B]: Oh, of course. The law will guarantee— guarantee you one. Whether you can afford one or not—and that's part of the rights that I—I read to you.

MR. WILSON: Right.

[DETECTIVE B]: So – I tell you what, let me go ahead and read them to refresh your memory. And then, . . . if you decide, then we'll decide what to do after that. Okay?

MR. WILSON: Yeah.

[DETECTIVE B]: Just so – at least I can say I've read them to you.

MR. WILSON: Right.

[DETECTIVE B]: Because I know, it was very hectic at the scene and I know it's very loud and everything going on. All right. So Wendell, at this time you have the right to remain silent. Anything you say can be used against you in a court of law. You have the right at this time to talk to a lawyer and have him present with you while you are being questioned. If you cannot afford to hire a lawyer, one will be appointed to represent you before any questioning, if you wish. You can decide at any time to exercise these rights and not answer any questions or make any statements. So, do you understand each of these rights I've explained to you?

MR. WILSON: Yes, I do.

[DETECTIVE B]: Okay. And then having these rights in mind, do you wish to talk to me now and give me your side of the story about what happened?

MR. WILSON: (Pause.) Yes.

[DETECTIVE B]: You would like to talk to me now? Okay. Because—I mean, my job is to get both side—

MR. WILSON: I'm dead meat anyways.

[DETECTIVE B]: I'm not going to say that.

MR. WILSON: Well, I'm saying it, so. . . . . .

[DETECTIVE B]: Well, I mean that's—all my job is, is to put everything together—to then show somebody.

MR. WILSON: Right.

[DETECTIVE C]: We just want to get your side.

[DETECTIVE B]: So you're willing to talk to us now?

MR. WILSON: Yeah.

[DETECTIVE B]: Okay. All right. So can you tell me. . . kind of start the day. How did your day start there? What happened?"

[Footnotes omitted; some paragraphing revised for readability; bolding, underlining, and highlighting added by Legal Update Editor]

[Detective B] continued to interview Wilson for more than an hour after Wilson made the statement that is emphasized above.

LEGAL ANALYSIS:

In key part, the analysis by the Court of Appeals on the Miranda-invocation issue is as follows:

> Whether an invocation of Miranda rights is unambiguous is "a bright-line inquiry" and is an "objective" one. . . . The question is whether, "[a]s a matter of law," it was reasonable for the detectives to conclude that the right to counsel was not invoked. Id. The State agrees that this court therefore reviews de novo whether Wilson's invocation was sufficiently clear.
>
> . . .
>
> "[I]f a suspect requests counsel at any time during the interview, he is not subject to further questioning until a lawyer has been made available or the suspect himself

reinitiates conversation." [Davis v. U.S., 512 U.S. 452, 458 (1994) (citing Edwards v. Arizona, 451 U.S. 477, 484-85 (1981))]. But the suspect must articulate his desire to have counsel present sufficiently clearly that a reasonable police officer in the circumstances would understand the statement to be a request for counsel. . . . Invoking Miranda requires the expression of an objective intent to do so. [State v. Piatnitsky, 180 Wn.2d 407, 412 2014).

> [Court's footnote: Piatnitsky involved the right to remain silent, rather than the right to counsel, but Washington courts "draw no distinctions between the invocations of different Miranda rights" because " 'there is no principled reason to adopt different standards for determining when an accused has invoked the Miranda right to remain silent and the Miranda right to counsel.'" . . .

As Davis summarized these principles, after a knowing and voluntary waiver of Miranda rights, law enforcement officers may continue questioning until and unless the suspect "clearly requests" an attorney. . . . If the suspect's statement is "not an unambiguous or unequivocal" request for counsel, the officers have no obligation to stop questioning him.

Ambiguity in a request for counsel may exist in the circumstances leading up to the request or in nuances inherent in the request itself. [Smith v. Illinois, 469 U.S. 91, 98-100 (1984)]. . . . Using context to transform an unambiguous invocation into open-ended ambiguity defies both common sense and established Supreme Court law.'" . . . .

In arguing the "language and circumstances" of Wilson's statement were "not unequivocal," the State emphasizes that Wilson's statement was one of inquiry. The State argues Wilson "ended his statement with a question about timing," suggesting he was "gathering information and assessing rather than making a plain assertion."

The State likens the case to [State v. Whitaker, 133 Wn. App. 199 (2006)] in which the defendant asked during a custodial interrogation, " 'when he could talk to an attorney.'" The questioning agents asked Whitaker whether he had an attorney or would need an appointed attorney, and Whitaker replied that he was talking about "'when in the process an attorney would be appointed' for him." We said Whitaker's question "might have been understood as an equivocal invocation of his right to counsel."

We confirmed this in [State v. Pierce, 169 Wn. App. 533, 545 (2012)] explaining "the Whitaker case presents an example of an equivocal request." Whitaker stands for the proposition that a mere inquiry about the process of obtaining counsel, such as Wilson's question, "How long would it take me to get a lawyer?," is not an unequivocal request for counsel.

In contrast, we agree with the trial court's reading of Pierce, that a statement such as "'I'm gonna need a lawyer'" unaccompanied by a context suggesting it is an inquiry about process clearly is an unequivocal request for counsel. In Pierce, the State did not appear to contend otherwise. We focused on whether Pierce's statement could be viewed as equivocal because it was made as the apodosis [apodosis means "the clause of a conditional sentence"] of a conditional sentence. Pierce's full statement was, "'If you're . . . trying to say I'm doing [sic] it I need a lawyer. I'm gonna need a lawyer because it wasn't me.'" . . . The court speculated it might have looked at the situation differently if the police had not yet accused Pierce of murder, but they had just accused him when he said this, so his statement was not truly conditional in context. . . .

Wilson's case falls between Whitaker and Pierce. As in Whitaker, Wilson posed a question about process by asking how long it would take to get a lawyer. But Wilson went clearly farther than the statements in Whitaker by stating he could not afford a lawyer, was going to have to ask for legal representation, and explaining that this was because if he answered questions without legal advice he was at risk of putting himself beyond a lawyer's help.

Courts have held statements such as these are a clear invocation of Miranda, both in Pierce, and in the authorities [that Pierce] discussed. In addition to Pierce's statement "'I'm gonna need a lawyer,'" [State v. Nysta, 168 Wn. App. 30 (2012)] held it was an unequivocal invocation when a suspect said, "'I gotta talk to my lawyer,'" . . . and [People v. Cook, 665 P.2d 640, 643 (Colo. App. 1983)] held it was an unequivocal invocation when a suspect said, "'Oh, I guess I am going to need an attorney,'".

Contrary to the State's argument, none of these cases suggested there was ambiguity in these statements because the future tense "going to" might refer to some time later than the custodial interrogation. We agree with Wilson's observation at oral argument that he grounded his reasoning for asking for counsel in the interrogation by the detective that was immediately before him.

Wilson's statements are nevertheless a degree less clear than those in Pierce, because Wilson made them in a context building to an inquiry about process. The question is whether this makes a dispositive difference. We believe it does not.

Another point Pierce makes clear is that a suspect's attitude of inquiry is not dispositive of whether a request for counsel is unequivocal. Beyond the ambiguous "'maybe I should talk to a lawyer,'" statements of inquiry have been held ambiguous, such as the inquiry in Whitaker and the inquiry "'I can't afford a lawyer but is there any way I can get one?'" [in Pierce].

But statements of inquiry have also been held to be unequivocal invocations, such as "'I have to get me a good lawyer, man. Can I make a phone call?'; 'Can I talk to a lawyer? At this point, I think maybe you're looking at me as a suspect, and I should talk to a lawyer. Are you looking at me as a suspect?'"; and " 'Can I have a lawyer?'" . . . . [citing federal circuit court decisions]. Wilson's statement is analogous to the unequivocal invocation " 'I have to get me a good lawyer, man. Can I make a phone call?'" Wilson builds to a question, including through the questioning body language noted by the trial court, but in doing so makes an unambiguous statement of having to ask for counsel.

This brings Wilson's case much more in line with Nysta. We held questioning should have ceased during an interview with detectives when Nysta said, "I gotta talk to my lawyer." . . . A detective continued questioning him, asking if he would be willing to take a polygraph and asking about a burglary law enforcement was investigating.

The State argued Nysta's statement about talking to a lawyer was equivocal because he really meant he wanted to consult with an attorney before deciding whether to take a polygraph, but was still willing to continue the interview without an attorney. . . . We rejected that reasoning, noting the State failed to cite authority that would support giving such an "elaborate contextual interpretation to words as plain as 'I gotta talk to my lawyer.'"

> Here too, that Wilson wanted a lawyer was clear. This is not at odds with a simultaneous desire to cooperate indicated, the State argues, by Wilson's adding he was not asking for counsel "out of resistance." Contrary to the State's argument, Wilson's subsequent question was not directed to "when or how he might need counsel down the road." . . . Wilson directed his inquiry to when or how he might get counsel down the road. This does not contextualize away his clear request to have counsel.
>
> The State also urges us to find context making Wilson's request for counsel ambiguous in the "circumstances leading up" to the interview, consisting chiefly of the statements Wilson had already made. Citing no authority, the State argues that Wilson's statement requesting counsel was equivocal because [1] he told his ex-wife he had shot Lila Wilson, [2] he said the same thing to the 911 operator, [3] he said the same thing again to police at the scene, [4] he appeared "calm, rational, articulate, and cordial" at the scene, and [5] Detective Edwards "knew all this."
>
> The State appears to argue that a true request for counsel was by then unlikely, because Wilson had said so much already. But this reasoning runs counter to Nysta for the same reasons discussed above, and counter to Davis itself. The point of the objective standard for invoking Miranda rights is to give law enforcement a bright line rule that can be applied without requiring questioning to cease merely if "a suspect makes a statement that might be a request for an attorney." Davis, 512 U.S. at 461. It is not enough to surmise from background circumstances that a suspect probably would want counsel, and by the same token surmise from circumstances that a suspect probably would not want counsel cannot defeat a clear statement that "I'm going to have to ask for legal representation."
>
> Having reviewed de novo Wilson's statements, their context, and the video and audio recording of the interview, we conclude Wilson unequivocally invoked his right to counsel. The admission of the interview at trial was error.

[Some citations omitted; others revised for style; some footnotes omitted; bracketed text inserted; some paragraphing revised for readability]

The Wilson Court goes on to rule further that the trial court did not commit "harmless error" in not excluding Wilson's post-invocation inculpatory statements. There was not sufficient other evidence of guilt to support a conclusion beyond a reasonable doubt that defendant would have been convicted anyway.

Result: Reversal of King County Superior Court conviction of Wendell Allen Wilson for first degree murder; case remanded for re-trial.

IN PHYSICAL CONTROL TRIAL, THE TRIAL COURT ERRED IN ADMITTING EXPERT TESTIMONY REGARDING (1) AVERAGE ALCOHOL METABOLIZATION RATE, AND (2) AMA RECOMMENDATION FOR LOWERING THE "PER SE" BAC LIMIT FOR DUI OFFENSES; HOWEVER, COURT OF APPEALS RULES THAT THE ERROR WAS HARMLESS

In State v. Wasuge, Wn. App. 2d ___ , 2024 WL ___ (Div. I, August 12, 2024), in the opening section of the Division One of the Court of Appeals Opinion, the Court summarizes as follows the Court's ruling:

> A jury convicted Ahmed Mohamud Wasuge of being in actual physical control of a motor vehicle while under the influence of intoxicating liquor, operating a motor vehicle without a functioning ignition interlock device, and driving while his license was revoked. On appeal, Wasuge argues we should reverse his convictions and remand for a new trial due to several alleged evidentiary errors and prosecutorial misconduct. Wasuge also contends that the victim penalty assessment (VPA) should be stricken from his judgment and sentence, an issue that the State concedes.
>
> In the published portion of this opinion, we conclude the trial court erred in admitting expert testimony that (a) the general population metabolizes alcohol at a rate of .01 to .02 percent per hour and (b) the American Medical Association (AMA) recommends that state legislatures lower the "per se" blood alcohol concentration (BAC) limit for driving under the influence (DUI) offenses from .08 to .05 percent. But we also conclude that these errors were harmless. In the unpublished portion of the opinion, we address Wasuge's remaining assignments of error. We remand for the trial court to strike the VPA from Wasuge's judgment and sentence but otherwise affirm.

[Footnote omitted]

Result: Affirmance, based on harmless error analysis, of King County Superior Court conviction of Ahmed Mohamud Wasuge of being in actual physical control of a motor vehicle while under the influence of intoxicating liquor, operating a motor vehicle without a functioning ignition interlock device, and driving while his license was revoked.

SECOND AMENDMENT: DEFENDANT LOSES HIS CHALLENGE TO HIS CONVICTION FOR VIOLATING RCW 9.41.040(1)(a); COURT OF APPEALS RULES THAT PERSONS WITH FELONY CONVICTIONS DO NOT HAVE A FEDERAL CONSTITUTIONAL RIGHT TO POSSESS A FIREARM

In State v. Bonaparte, ___ Wn. App. 2d ___ , 2024 WL ___ (Div. II, August 27, 2004), defendant loses his Second Amendment challenge to his conviction under RCW 9.41.040(1)(a). In the first paragraph of the Court's Opinion, the Court summarizes its ruling on the Second Amendment issue as follows:

> Theodore R. Bonaparte appeals his conviction for first degree unlawful possession of a firearm following a jury trial. Specifically, Bonaparte argues that his conviction is in violation of the Second Amendment because the State failed to prove a historical tradition of restricting firearms rights of individuals who have previously been convicted of first degree assault. We hold that because the Second Amendment right to keep and bear arms is not unlimited and Bonaparte is a convicted felon, Bonaparte's Second Amendment claim fails.

The Opinion explains that the ruling is guided by the Second Amendment ruling by the U.S. Supreme Court in New York State Rifle & Pistol Association, Inc. v. Bruen, 597 U.S. 1 (2022).

Result: Affirmance of Kitsap County Superior Court conviction of Theodore Russell Bonaparte for first degree unlawful possession of a firearm.

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BRIEF NOTES REGARDING AUGUST 2024 UNPUBLISHED WASHINGTON COURT OF APPEALS OPINIONS ON SELECT LAW ENFORCEMENT ISSUES

Under the Washington Court Rules, General Rule 14.1(a) provides: "Unpublished opinions of the Court of Appeals have no precedential value and are not binding on any court. However, unpublished opinions of the Court of Appeals filed on or after March 1, 2013, may be cited as nonbinding authorities, if identified as such by the citing party, and may be accorded such persuasive value as the court deems appropriate."

Every month I will include a separate section that provides brief issue-spotting notes regarding select categories of unpublished Court of Appeals decisions that month. I will include such decisions where issues relating to the following subject areas are addressed: (1) Arrest, Search and Seizure; (2) Interrogations and Confessions; (3) Implied Consent; and (4) possibly other issues of interest to law enforcement (though generally not sufficiency-of-evidence-to-convict issues).

The eight entries below address the August 2024 unpublished Court of Appeals opinions that fit the above-described categories. I do not promise to be able catch them all, but each month I will make a reasonable effort to find and list all decisions with these issues in unpublished opinions from the Court of Appeals. I hope that readers, particularly attorney-readers, will let me know if they spot any cases that I missed in this endeavor, as well as any errors that I may make in my brief descriptions of issues and case results. In the entries that address decisions in criminal cases, the crimes of conviction or prosecution are italicized, and brief descriptions of the holdings/legal issues are bolded.

1. State v. John Henry Sliger: On August 1, 2024, Division Three of the COA agrees with the Ferry County Superior Court ruling rejecting the defendant's suppression motion arguments in relation to his charge of *vehicular homicide*. The Sliger Opinion concludes that a breath test of defendant was valid despite the fact that – after defendant had removed from his mouth, at the direction of an officer, his main wad of tobacco – a few strands of tobacco remained in defendant's mouth at the time of the breath test. The **Court of Appeals rules that a "foreign substance," as used in the provisions of RCW 46.61.506(4)(a)(iii) relating to breath testing, is a foreign substance in an amount that can affect the accuracy of breath test results. The Court of Appeals rules that small strands of tobacco left in the mouth of the test subject, after he removed his main wad of tobacco, did not invalidate the breath results. The case is remanded to the trial court for trial.**

Here is a link to the Opinion in State v. Sliger:
https://www.courts.wa.gov/opinions/pdf/393151_unp.pdf

2. State v. Levelle Kenneth Johnson: On August 12, 2024, Division One of the COA rejects the challenges of defendant to his King County Superior Court conviction for *unlawful possession of a firearm in the first degree*. **The Court of Appeals rejects defendant's argument that he was unlawfully arrested, ruling that Seattle PD detectives acted within the scope of their jurisdiction when they arrested him in Pierce County on an arrest warrant.** The Court of Appeals notes that RCW 10.93.070 lists six exceptions in which an

officer can work outside his or her jurisdiction: (1) with written consent from the sheriff, (2) responding to an emergency, (3) an officer in the other jurisdiction requests assistance, (4) transporting a prisoner, (5) executing a warrant, and (6) if the officer is in fresh pursuit. The Court of Appeal explains:

> Here, it is not disputed that SPD officers executed in Pierce County a valid warrant for Johnson's arrest. RCW 10.93.070(5) clearly and unambiguously authorizes any qualified Washington peace officer to "execut[e] an arrest warrant" anywhere within the state.

Here is a link to the Opinion in State v. Johnson:
https://www.courts.wa.gov/opinions/pdf/834126.pdf

3. Personal Restraint Petition of Myron Lynn Woods II: On August 12. 2024, Division One of the COA rejects the challenges of defendant under a Personal Restraint Petition seeking review of his 2019 Pierce County Superior Court convictions for *five counts of unlawful possession of a controlled substance with intent to deliver, two counts of unlawful possession of a firearm in the first degree, and aggravators for being armed with a firearm and for a major violation of the Uniform Controlled Substance Act (UCSA).* **Among the rulings of the Court of Appeals are rejections of defendant's arguments that he received ineffective assistance of counsel at trial when his defense attorney (1) did not make an argument under Franks v. Delaware, 438 U.S. 154, 155 (1978) to claim that a search warrant affidavit contained misrepresentations of the facts; and (2) did not challenge the search warrant based on the Washington State Supreme Court precedent of State v. Thein, 138 Wn.2d 133 (1999, which held that an officer-affiant's statement about the officer's experience and training in regard to observing habits of drug dealers was not sufficient alone to link defendant's residence to the mere fact that defendant sold a large quantity of marijuana at an undisclosed location).**

In lengthy, fact-based analysis, the Court of Appeals explains that if defense counsel had raised arguments under Franks v. Delaware and under State v. Thein, the arguments would have failed in light of the particular facts of this case.

Here is a link to the Opinion in Personal Restraint Petition of Myron L. Woods:
https://www.courts.wa.gov/opinions/pdf/861832.pdf

4. State v. Ahmed Mohamud Wasuge: On August 12, 2024, Division Three of the COA issues an Opinion that rejects defendant's challenges to his conviction for *being in actual physical control of a motor vehicle while under the influence of intoxicating liquor, operating a motor vehicle without a functioning ignition interlock device, and driving while his license was revoked*. The Opinion of the Court of Appeals is (A) published in addressing admissibility of expert witness testimony related to BAC testing (see the entry above at pages 18-19 in this August 2024 Legal Update); and (B) unpublished in addressing some other issues, including the rejection by the Court of Appeals of defendant's argument that officers violated his Miranda rights by conducting a custodial interrogation of him without giving him Miranda warnings.

The Court of Appeals rules that Wasuge was not in "custody" within the meaning of that term under Miranda case law during the police questioning at issue, and therefore that Miranda warnings were not required. The Court of Appeals describes as follows the facts relating to the Miranda issue:

> On the morning of October 12, 2022, a 911 caller reported that a vehicle had abruptly stopped in the center of a residential road. Upon arriving at the scene at approximately 6:45 a.m., King County Sheriff's Office Deputies Andrew Farley and Andrew Robinson saw a stationary vehicle in the southbound lane of the road with its headlights and taillights illuminated. The officers noticed the vehicle's engine was running, the keys were in the ignition, and the transmission was in drive. The officers also observed Wasuge sitting in the reclined driver's seat asleep with his feet resting on the floorboard.
>
> The officers decided to "box the vehicle in" by parking their vehicles in front of and behind Wasuge's vehicle. Farley then knocked on the front driver's side window and announced himself as a law enforcement officer. When Wasuge awoke, he looked at Farley and began rolling down the back driver's side window before rolling down the front driver's side window. Farley immediately smelled "an odor of alcoholic beverages coming from the vehicle" and ordered Wasuge to put the gearshift in park and exit the vehicle, which he did.
>
> When Farley asked Wasuge "why he was asleep in the middle of the roadway," Wasuge said he was waiting for a friend and pointed at different houses in multiple directions. Farley suspected that Wasuge had been drinking alcohol because his breath smelled of alcohol; his speech was slurred; his eyes were bloodshot, glassy, and watery; he was unbalanced when walking and standing; and he generally appeared "dazed and confused." Farley asked Wasuge if he had been drinking, which Wasuge denied. After Wasuge performed poorly on the field sobriety tests (FSTs), Farley placed him under arrest for DUI. Farley then transported Wasuge to a hospital where a nurse drew his blood at 8:51 a.m. Later testing of this blood determined that Wasuge's BAC was .076 percent.

[Footnote omitted]

In key part, the analysis by the Court of Appeals on the Miranda custody issue is as follows:

> If a law enforcement officer does not provide Miranda warnings to a suspect before conducting a custodial interrogation, statements made by the suspect during the interrogation cannot be used as evidence in a criminal prosecution. . . . A person is in custody for Miranda purposes if "a reasonable person in the individual's position would believe he or she was in police custody to a degree associated with formal arrest." . . . To determine whether a person is in custody to a degree associated with formal arrest, courts examine the totality of the circumstances, including "the nature of the surroundings, the extent of police control over the surroundings, the degree of physical restraint placed on the suspect, and the duration and character of the questioning." . . .. Moreover, in analyzing whether Miranda warnings are required where a defendant is temporarily detained and questioned on the basis of reasonable suspicion of involvement in criminal activity, courts consider whether the police employ coercive or deceptive interrogation practices. Heinemann v. Whitman County of Wash., Dist. Court, 105 Wn.2d 796, 804-06 (1986). . . .
>
> Here, a reasonable person in Wasuge's position would not believe they were in police custody to a degree associated with formal arrest when Wasuge made the statements at issue. The questioning occurred on a public street in view of other motorists. Before asking Wasuge to perform the FSTs, Farley informed him these tests were voluntary. Approximately 20 minutes elapsed between when the officers initially encountered

> Wasuge and when Farley read him his Miranda rights. Nothing in the record indicates the officers engaged in coercive or deceptive interrogation tactics. Under these circumstances, Wasuge was not in custody for Miranda purposes when he made the statements at issue.
>
> To establish that he was in police custody to a degree associated with formal arrest, Wasuge avers that the officers imposed a significant degree of physical restraint by boxing in his vehicle with their emergency lights activated. While that evidence might establish that Wasuge was "seized" for Fourth Amendment purposes, the United States Supreme Court has squarely rejected the argument that when police temporarily detain a suspect during a traffic stop for suspected DUI, the suspect is necessarily in custody for Miranda purposes. Berkemer v. McCarty, 468 U.S. 420, 442 (1984). Washington courts have routinely applied Berkemer in cases involving police questioning of motorists.
>
> Moreover, boxing in Wasuge's vehicle was necessary to protect the officers' safety given that Wasuge could have accidentally accelerated the vehicle upon being awoken by Farley. . . . Contrary to Wasuge's argument, boxing in his vehicle during this brief DUI investigation did not elevate a traffic stop to a formal arrest.
>
> Wasuge also cites our Supreme Court's decision in State v. Sum, 199 Wn.2d 627, 631, (2022), notes that he is Black, and argues the trial court "failed to consider whether Mr. Wasuge would have felt he was in custody under a 'totality of the circumstances analysis,' from the perspective of 'an objective observer' who 'is aware that implicit, institutional, and unconscious biases, in addition to purposeful discrimination, have resulted in disproportionate police contacts, investigative seizures, and uses of force against Black, Indigenous, and other People of Color (BIPOC) in Washington.'" This argument fails because Wasuge never asked the trial court to consider this issue and, thus, there is no record upon which we may meaningfully review such a claim. The trial court did not err in denying Wasuge's CrR 3.5 motion to suppress the statements at issue.

[Some citations omitted, others revised for style]

Here is a link to the published and the unpublished parts of the Opinion State v. Wasuge:
https://www.courts.wa.gov/opinions/pdf/852868.pdf

5. State v. Michael A. Sendejo: On August 19, 2024, Division One of the COA rules against the challenge of defendant to his King County Superior Court conviction for *second degree murder*. **The Court of Appeals rejects defendant's arguments in which he claimed that, while he was in continuous custody, (A) law enforcement officers unlawfully continued to question him almost immediately after he had asserted his right to silence; and (B) about two hours after the first questioning session ended, law enforcement officers unlawfully reinitiated Miranda warnings, obtained a waiver, and began questioning him again.**

The Miranda issues in this case are highly fact-dependent, and this Legal Update entry will not excerpt from or provide a detailed outline of the extensive discussion by the Sendejo Court of the facts and the relevant Miranda-based case law.

Defendant did not challenge on appeal the trial court's determination that he waived his Miranda rights and made incriminating statements immediately after he – holding a bloody knife – was contacted by a responding law enforcement officer at the scene of a stabbing at a homeless encampment. The Court of Appeals notes that the initial waiver was established through proof that defendant told the officer that defendant understood his rights, and the defendant then asked to talk to a particular officer at the scene. Defendant made some incriminating statements to the officer whom he had requested.

The two Miranda issues in the case relate to what happened after defendant was transported to police headquarters following the above-described questioning at the crime scene.

- **ISSUE 1:** ***Did Detective A continue "interrogating" defendant after defendant asserted his right to silence?*** **(ANSWER: No, because Detective A's further statements were not "interrogation")**

At headquarters, shortly after transport, a detective re-Mirandized defendant, and this time the defendant invoked his right to remain silent. The detective continued talking to defendant, but the Court of Appeals states that the detective focused exclusively on photographing and asking about defendant's injuries, which injuries included a large laceration on his shoulder and some other cuts and bruise.

Defendant made some incriminating statements during that process. The Court of Appeals characterizes the statements from defendant during that process as "spontaneous" and "non-responsive" to the detective's questions. The Court of Appeals concludes that the questions and the photographing and other processing by the detective did not constitute "interrogation." Therefore, the Court rules, the detective did not violate the Miranda rule that prohibits further "interrogation" immediately after an arrestee invokes his right to silence.

- ***ISSUE 2: Did Detective B violate Miranda when Detective B initiated contact with defendant about two hours after Detective A's session with defendant?*** **(ANSWER: No, because the facts of this case are analogous to those in Michigan v. Mosley, 423 U.S. 96 (1975))**

About two hours after detective A had completed his processing of defendant in relation to the defendant's injuries, a second detective (Detective B) at headquarters began a new questioning session with defendant. Detective B gave defendant another full set of Miranda warnings, and this time the defendant waived his rights and answered interrogation questions about defendant's commission of the stabbing. The Court of Appeals rules that Detective B did not violate Miranda in his initiation of further contact with defendant because (1) a significant period of time (two hours) had passed since the defendant's assertion to Detective A of his right to silence; (2) law enforcement had not done anything improper during the two-hour period between sessions with Detective A and Detective B; and (3) a full set of Miranda warnings was given and a waiver obtained by Detective B before he asked any questions.

In key part, the explanation by the Court of Appeals on this legal issue is as follows;

> In State v. Wheeler, 108 Wn.2d 230, 238 (1987), our Supreme Court held that in determining the validity of a waiver of a previously asserted right to remain silent, the court may consider as relevant factors:

> (1) whether the right to cut off questioning was scrupulously honored; (2) whether the police engaged in further words or actions amounting to interrogation before obtaining a waiver; (3) whether the police engaged in tactics tending to coerce the suspect to change his mind; and (4) whether the subsequent waiver was knowing and voluntary.

Once a suspect has invoked the right to remain silent, the police "may not resume discussion with the suspect until the suspect reinitiates further communication with the police, or a significant period of time has passed and officers reissue a fresh set of Miranda warnings and obtain a valid waiver." [In re Personal Restraint of Cross, 180 Wn.2d 664 (2014) (citing Miranda, [Michigan v. Mosley, 423 U.S. 96 (1975)]. "Through the exercise of [a suspect's] option to terminate questioning [the suspect] can control the time at which questioning occurs, the subjects discussed, and the duration of the interrogation." Mosley, 423 U.S. at 103-04.

Readvising an "individual of [their] Miranda rights demonstrates that [an] earlier decision to remain silent has been recognized by the police, and also reminds the individual that [they] can continue to exercise those rights." . . . . When the police either reopen a formal interrogation or solicit a response from a defendant in some other way, such statements will be admissible only if they were preceded by the Miranda warnings. . . .

In Mosley, Mosley was advised of his rights before his initial interrogation and said he understood. . . . When Mosley said he did not want to discuss the robberies that precipitated his arrest, the detective immediately ceased the interrogation and did not try to resume questioning or persuade Mosley to reconsider. . . . After more than two hours, Mosley was questioned by a different officer at a different location and about a different crime. . . . Mosley was again given Miranda warnings at the start and "was thus reminded again that he could remain silent and could consult with a lawyer, and was carefully given a full and fair opportunity to exercise these options." . . . The Supreme Court concluded that Mosley's "right to cut off questioning" was fully respected. . . .

But Mosley "does not prescribe a bright line test" and "[a]lthough the Court in Mosley states two hours was a 'significant period of time,' the Court does not suggest a durational limit." Chambers, 197 Wn. App. at 132 (quoting Mosley, 423 U.S. at 106).11

> [Court's Footnote 11: *While in Mosley the latter questioning pertained to a separate crime, Washington and federal courts have not treated the nonexclusive factors considered in Mosley as dispositive. See Chambers, 197 Wn. App. at 132-33 (collecting cases); Wheeler, 108 Wn.2d at 238-39*.]

In Chambers, this court explained, "[t]he touchstone of the analysis under Mosley is whether a review of the circumstances leading up to the statements made to police show the right to cut off questioning was fully respected." . . .

As for Sendejo's statements to [Detective B], the trial court found "the time between the end of the photographing of the defendant and the advisement of Miranda Rights by [Detective B] was a significant period of time for law enforcement to reengage with the defendant." . . .

As in Chambers, the circumstances leading to [Detective B's] interview of Sendejo show the police scrupulously honored Sendejo's right to cut off questioning. While Sendejo

> explicitly invoked his right to remain silent to [Detective A], [the detective] scrupulously honored this right and did not ask Sendejo a single question related to the incident or engage in further words or actions amounting to interrogation. Instead, Sendejo gave statements that were spontaneous and nonresponsive. [Detective A] essentially ignored the incriminatory statements Sendejo repeatedly made.
>
> Nor does the video reflect that officers used any tactics that could coerce Sendejo into changing his mind. The officers offered Sendejo water, food, and bathroom breaks, and explained the process they had to go through. At this point, Sendejo had been given Miranda warnings twice and nothing in the record reflects that he did not understand his rights.
>
> When [Detective B] entered the interrogation room, he explained to Sendejo that since he was new to talking to him, he was going to go over Sendejo's rights again. [Detective B] issued Miranda warnings to Sendejo for the third time. Sendejo stated that he understood his rights and he did not invoke his right to remain silent. About two hours had elapsed since Sendejo invoked his right to remain silent. Sendejo had been left alone, but checked on, for about 1 hour and 40 minutes. Thus, a significant period of time had elapsed since Sendejo invoked his rights when [Detective B] re-advised Sendejo of his Miranda rights to attempt a formal interrogation. Sendejo could have but did not re-invoke his rights.
>
> We conclude that the circumstances leading up to the interview show the police scrupulously honored Sendejo's right to cut off questioning, and the trial court did not err in denying the motion to suppress the statements Sendejo made to [Detective B].

[Footnote 12 omitted; some paragraphing revised for readability; some case citations omitted, other case citations revised for style; citations to the record omitted]

Here is a link to the Opinion in State v. Sendejo:
https://www.courts.wa.gov/opinions/pdf/847597.pdf

LEGAL UPDATE EDITOR'S RESEARCH NOTES AND COMMENTS: For an article addressing issues relating to initiation of contact with suspects who have invoked their Miranda rights, see the article : "Initiation of Contact Rules Under the Fifth Amendment" on the Criminal Justice Training Commission's LED page at: https://www.cjtc.wa.gov/resources/law-enforcement-digest. Note that, as explained in the Article, if defendant had invoked his right to an attorney to Detective A in the initial session at headquarters (instead of invoking only his right to silence), then Detective B would have been held by the Court of Appeals as being barred from initiating contact with the defendant to seek a Miranda waiver. See the U.S. Supreme Court decisions in Edwards v. Arizona, 451 U.S. 477 (1981) and Arizona v. Roberson, 486 U.S. 675 (1988), which distinguished the invocation of the right to silence situation that was presented in the U.S. Supreme Court decision in Michigan v. Mosley, 423 U.S. 96 (1975).

For some additional background information on case law relating to Miranda, see, on the Criminal Justice Training Commission LED page, pages 21 through 29 (plus page 64 regarding initiation-of-contact restrictions) of Confessions, Search, Seizure and Arrest: A Guide for Police Officers and Prosecutors May 2015 By Pamela B. Loginsky, Staff Attorney, Washington Association of Prosecuting Attorneys, discussing defendant invocation of rights and revoking of initiation and related issues (note that although Ms. Loginsky is no longer with WAPA, and her Guide has not been updated since

2015, I believe that none of the cases discussed in the Guide regarding Miranda have been overruled by more recent appellate court decisions.

6. State v. Andre M. Drummer: On August 20, 2024, Division Two of the COA rejects the challenges of defendant to his Pierce County Superior Court convictions for *unlawful possession of a stolen vehicle, making or possessing motor vehicle theft tools, and obstruction of a law enforcement officer*. **The Court of Appeals rejects defendant's arguments that (1) officers exceeded the scope of a Terry stop, and (2) did not have probable cause to arrest him.**

The opening section of the Opinion of the Court of Appeals summarizes the Court's ruling on the highly fact-dependent issues as follows:

> Dummer, with drug paraphernalia in his lap, appeared to be asleep or passed out in a car that returned as possibly stolen. Deputies approached the car with their weapons drawn and ordered Dummer to show his hands. Ultimately, he did not comply and reached towards his seat and the ignition. The deputies grabbed his arms and pulled him from the car while he resisted their efforts. The deputies handcuffed Dummer and searched him for weapons.
>
> On appeal, Dummer argues that the deputies exceeded the scope of a proper Terry1 detention when they pulled him out of the car and handcuffed him, and that their detention of Dummer constituted an unlawful warrantless arrest. Dummer further argues that at the point this alleged arrest occurred, the police lacked probable cause and therefore the deputies lacked the authority of law to search his person. Accordingly, Dummer contends that the trial court erred in not suppressing the evidence that was collected during the search of his person and that his convictions should be reversed as a result.
>
> **We hold: (1) that Dummer was subjected to a Terry detention at the time of the search of his person, not a custodial arrest; (2) that the frisk of Dummer's person did not exceed the lawful scope of a Terry frisk; and (3) that even if Dummer had been subjected to a custodial arrest at the time he was pulled out of the car and handcuffed, the arrest was supported by probable cause for obstructing a law enforcement officer, and thus the ensuing search of Dummer's person was a lawful search incident to arrest**. Accordingly, we affirm Dummer's convictions. . . .

The Drummer Opinion provides extensive details (not included here) on the facts and case law relating to the issues noted above in this Legal Update entry.

Here is a link to the Opinion in State v. Drummer:
https://www.courts.wa.gov/opinions/pdf/D2%2058750-5-II%20Unpublished%20Opinion.pdf

7. State v. Brett Harold Grimnes: On August 26, 2024, Division One of the COA rejects the challenges of defendant to his Skagit County Superior Court conviction for *robbery in the first degree with a deadly weapon enhancement.* **Among other rulings of law, the Court of Appeals rejects defendant's argument that his Sixth Amendment right to confer privately with his attorney was violated by jail personnel looking at what he characterizes as confidential trial preparation materials.**

The Grimines Opinion sums up the Court's view that the jail personnel followed proper procedures:

> Given the context and surrounding circumstances, we conclude that the jail deputies did not violate Grimnes's Sixth Amendment right to confer privately with his counsel by checking his mail for contraband. Testimony from [Sergeant A] and [Deputy B] supports the court's finding that the jail staff followed procedure and only opened the envelope to check for contraband. Because the envelope was unmarked and unsealed, it was reasonable for the jail deputies to do so.
>
> Also, [Sergeant A's] review of the documents was so short that she would not have gained anything of significance from these particular documents. [Deputy B's] short review indicates that she was following procedure by briefly scanning the documents in order to properly characterize the kind of documents left behind. Given these circumstances, we conclude that no Sixth Amendment violation occurred.

[Paragraphing revised for readability]

The Grimnes Opinion sums up as follows the Court's view that the materials in question were not privileged documents:

> The records at issue, a list of Grimnes's EBT transactions [government assistance transactions], were facts and did not reveal any privileged information about his defense or trial strategy. Grimnes's assertion that the documents were prepared in anticipation of litigation is also unavailing. The records were prepared by the DSHS, which routinely prepares and maintains public records related to the programs it administers. WAC 388-01-030.
>
> Moreover, none of the documents in the envelope had notes from Grimnes, his defense investigator, or his standby counsel. Because the documents did not contain communications from standby counsel or the investigator, they were not privileged. Therefore, we conclude that the trial court did not abuse its discretion in denying Grimnes's motion to dismiss.

[Paragraphing revised for readability]

The Court of Appeals also concludes that, even it is assumed for the sake of argument that government actors violated the Sixth Amendment by looking at documents, defendant cannot establish that he was prejudiced. The Grimnes Opinion explains as follows:

> The testimony from the evidentiary hearing is sufficient to meet this burden. [Deputy B] testified that she looked at the documents for "[p]robably five seconds or less" and that she followed the jail's policy for examining legal mail and discovery materials. She also testified that she did not tell anybody what was contained in the documents. [Sergeant A] testified that Grimnes told her and [Deputy B] that the documents were not discovery and that they could keep the documents.
>
> Both prosecutors assigned to Grimnes's case testified that they did not know what was in the envelope, that no one from the jail told them about the documents, and that law enforcement never discussed the documents in question with them. The lead law enforcement investigator also testified that he did not know what the documents in the envelope were, and that he was only made aware that Grimnes had allegedly had legal mail taken from him when he was subpoenaed to appear in court.

> Because no one involved in Grimnes's prosecution knew anything about the documents, the State met its burden of proving Grimnes was not prejudiced beyond a reasonable doubt. And because Grimnes was not prejudiced, the court did not err by denying his CrR 8.3(b) motion to dismiss.

[Paragraphing revised for readability]

Here is a link to the Opinion in State v. Grimnes:
https://www.courts.wa.gov/opinions/pdf/844776.pdf

8. State v. Cristian Magaña-Arevelo: On August 26, 2024, Division One of the COA rejects the challenges of defendant to his King County Superior Court conviction for *one count of murder in the first degree with firearm enhancement*. **The Court of Appeals agrees with defendant that the trial court should have ruled that a detective should have Mirandized him. That is because, under the totality of circumstances as viewed by the Court of Appeals, defendant was in "custody" for Miranda purposes at the point when, following a SWAT-team assisted seizure of defendant from his home, a detective questioned him in a police vehicle. The detective tried with his words and actions to make the circumstances voluntary and non-custodial, but the Court of Appeals rules that the lengthy questioning in a police-dominated atmosphere made the circumstances "custodial" under Miranda.**

The Court of Appeals rules, however, that defendant's statements to the detective were not coerced, and that therefore the statements could be lawfully admitted at trial to impeach the defendant's testimony. The Court of Appeals notes that some of defendant's statements were erroneously admitted by the trial court as substantive evidence, not as impeachment evidence. Ultimately, however, the Court of Appeals rules that the untainted evidence against defendant unrelated to any of his incriminating statements during interrogation was so overwhelming that any error by the trial court in admitting defendant's admissions in interrogation was harmless error.

The facts relating to the Miranda-related issues are complicated, and the description of the facts and the legal analysis by the Court of Appeals is lengthy. Those facts and legal analysis will not be addressed here beyond what is noted above. But officers would be well-advised to review the entire Opinion.

Here is a link to the Opinion in State v. Magaña-Arevalo:
https://www.courts.wa.gov/opinions/pdf/842595.pdf

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LEGAL UPDATE FOR WASHINGTON LAW ENFORCEMENT IS ON WASPC WEBSITE

Beginning with the September 2015 issue, the most recent monthly Legal Update for Washington Law Enforcement is placed under the "LE Resources" link on the Internet Home Page of the Washington Association of Sheriffs and Police Chiefs. As new Legal Updates are issued, the three most recent Legal Updates will be accessible on the site. WASPC will drop the oldest each month as WASPC adds the most recent Legal Update.

In May of 2011, John Wasberg retired from the Washington State Attorney General's Office. For over 32 years immediately prior to that retirement date, as an Assist ant Attorney General

and a Senior Counsel, Mr. Wasberg was either editor (1978 to 2000) or co-editor (2000 to 2011) of the Criminal Justice Training Commission's Law Enforcement Digest. From the time of his retirement from the AGO through the fall of 2014, Mr. Wasberg was a volunteer helper in the production of the LED. That arrangement ended in the late fall of 2014 due to variety of concerns, budget constraints, and friendly differences of opinions regarding the approach of the LED going forward. Among other things, Mr. Wasberg prefers (1) a more expansive treatment of the core-area (e.g., arrest, search and seizure) law enforcement decisions with more cross references to other sources and past precedents; and (2) a broader scope of coverage in terms of the types of cases that may be of interest to law enforcement in Washington (though public disclosure decisions are unlikely to be addressed in depth in the Legal Update). For these reasons, starting with the January 2015 Legal Update, Mr. Wasberg has been presenting a monthly case law update fo r published decisions from Washington's appellate courts, from the Ninth Circuit of the United States Court of Appeals, and from the United States Supreme Court.

The Legal Update does not speak for any person other than Mr. Wasberg, nor does it speak for any agency. Officers are urged to discuss issues with their agencies' legal advisors and their local prosecutors. The Legal Update is published as a research source only and does not purport to furnish legal advice. Mr. Wasberg's email address is jrwasberg@comcast.net. His cell phone number is (206) 434-0200. The initial monthly Legal Update was issued for January 2015. Mr. Wasberg will electronically provide back issues on request.

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INTERNET ACCESS TO COURT RULES & DECISIONS, RCWS AND WAC RULES

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

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

Access to relatively current Washington state agency administrative rules (including DOL rules in Title 308 WAC, WSP equipment rules at Title 204 WAC, and State Toxicologist rules at WAC 448-15), as well as all RCW's, is at [http://www.leg.wa.gov/legislature]. Information about bills

filed since 1991 in the Washington Legislature is at the same address. Click on “Washington State Legislature,” “bill info,” “house bill information/senate bill information,” and use bill numb ers to access information. Access to the “Washington State Register” for the most recent proposed WAC amendments is at this address too. In addition, a wide range of state government information can be accessed at [http://access.wa.gov]. For information about access to the Criminal Justice Training Commission’s Law Enforcement Digest and for direct access to some articles on and compilations of law enforcement cases, go to [https://www.cjtc.wa.gov/resources/law-enforcemehttps://www.cjtc.wa.gov/resources/law-enforcement-digestnt-digest].

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