LEGAL UPDATE FOR WASHINGTON LAW ENFORCEMENT

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JULY 2025

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NINTH CIRCUIT OF THE UNITED STATES COURT OF APPEALS

SECOND AMENDMENT DOES NOT PRECLUDE CONVICTIONS UNDER FEDERAL LAW FOR THE CRIMES OF (1) CONSPIRING TO MANUFACTURE FIREARMS FOR SALE WITHOUT A FEDERAL LICENSE, AND (2) SELLING A FIREARM TO A FELON

In U.S. v. Vlha, ___ F.4th ___ , 2025 WL ___ (9th Cir. July 9, 2025), a three-judge Ninth Circuit panel is unanimous in rejecting the two defendants' Second Amendment challenges to Federal Court convictions for conspiring to manufacture firearms and for selling a firearm to a felon. A staff summary (which is not part of the Ninth Circuit Opinion) provides the following synopsis of the panel's Opinion:

The panel affirmed James Vlha's and Travis Schlotterbeck's convictions under 18 U.S.C. § 922(a)(1)(A) for conspiring to manufacture firearms for sale without a federal license and Schlotterbeck's conviction under 18 U.S.C. § 922(d)(1) for selling a firearm to a felon.

Defendants argued that these two statutes violate the Second Amendment.

When, as here, the challenger is an individual whose direct possessory right to "keep and bear Arms" is not implicated, the ancillary-rights doctrine, which was not abrogated by [the U.S. Supreme Court decision in] New York State Rifle & Pistol Ass'n v. Bruen, 597 U.S. 1 (2022). In this context, the Second Amendment is limited: it protects ancillary activities only if the regulation of such activities meaningfully constrains the core possessory right.

The panel applied the meaningful-constraint test to determine whether the conduct at issue is presumptively protected by the Second Amendment.

The panel held that the text of the Second Amendment does not cover the conduct regulated by § 922(a)(1)(A) because requiring commercial firearm manufacturers to obtain licenses — under a non-discretionary scheme that requires the license to be issued if the applicant pays a filing fee, is at least 21-years old, has premises on which to conduct his business, and is generally compliant with other laws — does not meaningfully constrain would-be purchasers from obtaining firearms. Defendants' constitutional challenge as to § 922(a)(1)(A) therefore fails.

The panel held that Schlotterbeck's facial and as-applied challenges to § 922(d)(1) also fail. The logic of United States v. Duarte, 137 F.4th 743 (9th Cir. 2025) (en banc) — which held that 18 U.S.C. § 922(g)(1)'s ban on felons possessing firearms is justified by our nation's history and tradition of disarming people the legislature deems dangerous — dictates the outcome here. Section § 922(d)(1)'s prohibition on firearms to felons cannot meaningfully constrain the possessory rights of felons because they do not have possessory rights.

[Some paragraphing revised for readability]

Result: Affirmance of the defendants' convictions by the U.S. District Court (Central District of California) for violations of federal laws against conspiring to manufacture firearms for sale without a federal license (Vlha) and against selling a firearm to a felon (Schlotterbeck).

SECOND AMENDMENT IS HELD IN 2-1 NINTH CIRCUIT DECISION TO PRECLUDE CALIFORNIA BACKGROUND CHECK REQUIREMENT FOR AMMUNITION PURCHASE

In Rhode v. Bonta, ___ F.4th ___ , 2025 WL ___ (9th Cir., July 24, 2025), a three-judge Ninth Circuit panel rules in a 2-1 decision that California's statutory background check regime for firearm ammunition purchase violates the Second Amendment.

[LEGAL UPDATE EDITOR'S INTRODUCTORY COMMENT: I will not speculate on whether any legislation of the State of Washington is placed in doubt by the Rhode v. Bonta decision.]

A Ninth Circuit staff summary (which is not part of the panel Opinions) provides the following synopsis of the Majority Opinion and the Dissenting Opinion:

> Affirming the district court's grant of a permanent injunction, the panel held that California's ammunition background check regime, which requires firearm owners to complete background checks before each ammunition purchase, facially violates the Second Amendment.

[Majority Opinion Analysis]

> The panel [i.e., the Majority Opinion] applied the two-step framework set forth in New York State Rifle and Pistol Association v. Bruen, 597 U.S. 1 (2022), in assessing plaintiffs' Second Amendment challenge.
>
> Applying the first step, the panel held that California's ammunition background check regime implicates the plain text of the Second Amendment because the regime meaningfully constrains the right to keep operable arms. Applying the second step, the panel held that the government failed to carry its burden of showing that California's ammunition background check regime "is consistent with the Nation's historical tradition of firearm regulation." [The Majority Opinion concludes that} [t]he historical analogues proffered by California were not within the relevant time frame, nor were they relevantly similar to California's ammunition background check regime.
>
> Accordingly, the panel held that California's ammunition background check regime did not survive scrutiny under the two-step Bruen analysis.
>
> The panel [i.e., the Majority Opinion] next considered Bruen's footnote stating that "nothing in [the Supreme Court's] analysis should be interpreted to suggest the unconstitutionality of the 43 States' 'shall-issue' licensing regimes." The panel explained that the Supreme Court indicated that shall-issue regimes may be constitutional, but did not hold that they were per se consistent with the Second Amendment.
>
> Moreover [according to the Ninth Circuit Majority Opinion], Bruen shed no light on the constitutionality of an ammunition background check [statutory] regime, which is meaningfully distinguishable from a shall issue licensing regime.
>
> Finally, the panel [i.e., the Majority Opinion] considered the implications of the nature of plaintiffs' facial challenge to California's ammunition background check regime. The panel held that Bruen's two-step framework applies regardless of whether a plaintiff brings a facial or as-applied challenge to a law alleged to violate the Second Amendment. Because California's ammunition background check regime violates the Second Amendment, the panel held that the district court did not abuse its discretion in granting a permanent injunction.

[Dissenting Opinion Analysis]

> Dissenting, Judge Bybee would reverse the judgment of the district court and hold that California's ammunition background check scheme is facially constitutional.

> Under the first step of the Bruen framework, California's imposition of a de minimis delay and small fee for purchasing ammunition cannot possibly "meaningfully constrain" the right to keep and bear arms, and therefore it is unnecessary to proceed to Bruen's second step. In addition, the Supreme Court has repeatedly recognized that objective, "shall-issue" licensing regimes — like California's — are presumptively lawful, and plaintiffs have failed to rebut that presumption.
>
> Judge Bybee also analyzed the Commerce Clause and preemption arguments that the majority did not reach, and would hold that (1) California's face-to-face requirement to consummate ammunition transactions does not violate the Commerce Clause; and (2) federal law does not preempt California's prohibition on bringing out-of-state ammunition into the state.

[Bracketed language added by Legal Update editor; some paragraphing revised for readability]

Result: Affirmance of permanent injunction issued by U.S. District Court (Southern District of California) barring enforcement of the California ammunition background check statutory scheme.

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WASHINGTON STATE SUPREME COURT

THE 2021 BLAKE DECISION INVALIDATING DRUG POSSESSION CRIMES IS NOT SELF-EXECUTING, SO IT ONLY MADE PAST POSSESSION CONVICTIONS VOIDABLE, NOT AUTOMATICALLY VOID; DEFENDANT'S POLYGRAPH RESULTS WHILE ON COMMUNITY CUSTODY STATUS UNDER A PRE-BLAKE POSSESSION CONVICTION VALIDLY SUPPORTED A DOC ARREST WARRANT

In State v. Balles, ___ Wn.3d ___ , 2025 WL ___ (July 31, 2025), defendant loses some of his challenges to criminal charges of two counts of drug possession with an intent to distribute, and one count each of unlawful firearm possession and stolen firearm possession. The charges arose from a search by CCOs during an arrest on a warrant for a community custody violation. The case is remanded to consider some other arguments of defendant challenging his charges.

The Supreme Court's unanimous Opinion agrees with a Division Three Court of Appeals ruling in the case that had reversed the Yakima County Superior Court's order to dismiss the charges. The Supreme Court rules that the Washington Supreme Court decision in State v. Blake, 197 Wn.2d 170 (2021) – which invalidated as unconstitutional the then-existing RCW prohibition on simple possession of a controlled substance – was not self-executing, so it only made past possession convictions voidable, not automatically void. Therefore, defendant's community custody status under a pre-Blake possession conviction validly supported his arrest warrant.

The introduction to the Washington Supreme Court's Opinion summarizes the ruling as follows:

> This case concerns the validity of an arrest warrant that was issued prior to our 2021 decision in State v. Blake but executed afterward. In Blake, we found the statute criminalizing simple drug possession to be unconstitutional because it lacked an intent element.

> In 2020, Kelly Balles was serving a 12-month community custody sentence for an underlying simple drug possession conviction. During that sentence, Mr. Balles consistently failed to report to his community corrections officer in violation of his sentence requirement. As a result, the secretary of the Department of Corrections (DOC) issued a warrant for Mr. Balles's arrest.
>
> When law enforcement officers served the warrant [about one month after the Blake decision was issued], they found evidence of additional violations and subsequently charged Mr. Balles with new offenses. In an evidence suppression hearing, the trial court ruled that our Blake decision automatically invalidated Mr. Balles's community custody term and the DOC warrant. The [trial] court suppressed the evidence found during Mr. Balles's arrest.
>
> The Court of Appeals, in a split decision, reversed. State v. Balles, 32 Wn. App. 2d 356 review granted, 4 Wn.3d 1006 (2025).
>
> Although the statute at issue in Blake was effectively invalidated at the time the decision was filed, we hold that Blake did not automatically invalidate the outstanding warrant, which was based on a community custody violation. Instead, Blake made the warrant voidable. We affirm the Court of Appeals and remand to the trial court to address the unresolved arguments raised in this case.

Some citations omitted, others revised for style; some paragraphing revised for readability; bracketed language added by Legal Update editor]

Result: Remand of the case to the Yakima County Superior Court to consider other challenges by defendant Kelly Jay Balles to charges of two counts of drug possession with an intent to distribute, and one count each of unlawful firearm possession and stolen firearm possession.

KING COUNTY'S ADMINISTRATIVE BOOKING PROCESS, WHICH REQUIRES PATTING DOWN, HANDCUFFING, AND DETAINING OUT-OF-CUSTODY DEFENDANTS (SOMETIMES IN JAIL CELLS) TO COLLECT FINGERPRINTS AND OTHER INFORMATION IS HELD TO VIOLATE ARTICLE I, SECTION 7 OF THE WASHINGTON CONSTITUTION

In State v. Evans, ___ Wn.3d ___ , 2025 WL ___ (July 31, 2025), the Washington Supreme Court is unanimous in holding that King County's administrative booking process, which requires patting down, handcuffing, and detaining out-of-custody defendants (sometimes in jail cells) to collect fingerprints and other information violates article I, section 7 of the Washington constitution.

The Opinion for the unanimous Court summarizes the ruling as follows in the introduction to the Opinion:

> This case comes to us on direct, interlocutory review of a superior court order denying the State's motion to permit the administrative booking of an out-of-custody pretrial defendant, Kyle Evans, for the purpose of taking his fingerprints and other identifying information.
>
> At issue in this case is whether King County's administrative booking process, which requires patting down, handcuffing, and detaining out-of-custody defendants (sometimes

in a jail cell) to collect their fingerprints and other information violates article I, section 7 of the Washington Constitution. RCW 10.98.050 authorizes the collection of fingerprints and other identifying information from any person alleged to have committed a felony.

However, the statute is silent as to the method for how this information is to be collected and when or where the collection should take place. Different trial court judges in the two divisions of King County Superior Court (Seattle and Kent) have reached opposite conclusions on this issue. Although the underlying issue in this case originates from the King County Superior Court's Maleng Regional Justice Center (MRJC) in Kent, our decision in this case is applicable to both divisions of King County, and we take this opportunity to resolve the conflict.

Guided by our independent state law analysis, we hold that King County's administrative booking process violates article I, section 7 because it intrudes on out-of-custody pretrial defendants' "'private affairs,'" and the State fails to satisfy its burden in showing that it is performed with the necessary "'authority of law'" to justify the intrusion. Blomstrom v. Tripp, 189 Wn.2d 379, 402, 403 (2017) (quoting State v. Surge, 160 Wn.2d 65, 71 (2007) (plurality opinion)). Therefore, we affirm the trial court's order in Evans' case and remand for further proceedings consistent with this opinion.

[Citations revised for style]

Result: Affirmance of King County Superior Court order denying the State's motion to permit the administrative booking of an out-of-custody pretrial defendant, Kyle Evans, for the purpose of taking his fingerprints and other identifying information.

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WASHINGTON STATE COURT OF APPEALS

WARRANTLESS SEARCH EXCEPTION FOR PROBATIONERS AND PAROLEES: CCO SEARCH OF DEFENDANT'S HOTEL ROOM HELD LAWFUL BASED ON DEFENDANT'S RECENT FAILURE OF A POLYGRAPH TEST ADMINISTERED BY DOC

In State v. Smith, ___ Wn. App. 2d ___ , 2025 WL ___ (Div. I, July 21, 2025) Division One of the Court of Appeals affirms a Snohomish County Superior Court order that revoked eligibility of Justin R. Smith for sentencing under the statutory Special Sex Offender Sentencing Alternative. The Smith Opinion begins by summarizing the decision as follows:

> In 2021, Justin Smith was convicted of first degree rape of a child [for raping his seven-year-old daughter] and received a suspended sentence under the special sex offender sentencing alternative (SSOSA) statute, RCW 9.94A.670. The State subsequently filed a petition to revoke Smith's SSOSA alleging he violated the conditions of his suspended sentence by using an unapproved smartphone to view child pornography and communicate with minor children over the internet. In 2024, following an evidentiary hearing, the trial court issued an order finding the State had proved its alleged violations, revoking Smith's suspended sentence, and reinstating his original sentence.

The Smith Opinion describes as follows the facts and proceeding relating to the revocation process:

> In December 2023, Smith failed a polygraph test administered by DOC after being "asked about possessing any unauthorized electronic devices." [Court's Footnote 2: *Condition 8 of Smith's SSOSA sentence required him to "participate in . . . polygraph examinations as directed by the supervising [CCO], to ensure conditions of community custody."*]
>
> Based on this failure, [Smith's CCO], suspected Smith "was possibly communicating with minors" and "looking up victims[] [and] child pornography" in violation of his sentencing conditions. On December 12, 2023, [Smith's CCO] and two other CCOs went to Smith's apartment and obtained Smith's consent to search the apartment.
>
> During their search, the CCOs discovered three cell phones: Smith's Google smartphone (which was the only electronic device that his CCO had "approved"), a cell phone belonging to Smith's girlfriend, and a third, Samsung smartphone located in the bedroom on Smith's side of the bed. [Smith's CCO] asked Smith to unlock the Samsung smartphone, which Smith was able to do using his fingerprint.
>
> The CCOs placed Smith under arrest, at which point Smith stated, "fuck, I'm going to prison for the rest of my life." When the CCOs asked Smith what they were "going to find on this phone," Smith stated they would find "lewd images" and "child pornography" that he obtained on the "dark web."
>
> The CCOs then returned to their field office and conducted a search of the Samsung smartphone. During this search, the CCOs "found multiple conversations with minors, images of minor age females ranging from 8 to 16 [years old] . . . , [n]ude images, [and] pornography." The CCOs discovered Smith had used the Samsung smartphone to conduct online searches relating to adult pornography and to purchase images and videos depicting child pornography. Additionally, the CCOs observed that Smith was using the Samsung smartphone to engage in conversations with minor children via "Snapchat, Twitter, Facebook," and "text messaging" that "were sexual in nature."

[Some paragraphing revised for readability]

The Smith Court provides the following legal analysis in explaining that the CCOs' warrantless searches did not violate Smith's constitutional or statutory rights under Washington law:

> Because Smith's challenges to the constitutionality of his sentencing conditions fail, his argument that the trial court erred by "considering evidence obtained when Mr. Smith's home was searched without lawful authority" necessarily fails as well.
>
> Article 1, section 7 of the Washington Constitution generally requires law enforcement officers to obtain a warrant to disturb a person's home or private affairs. State v. Winterstein, 167 Wn.2d 620, 628 (2009). But Washington law recognizes an exception to the warrant requirement for offenders under community supervision.
>
> "[I]ndividuals on probation are not entitled to the full protection of article I, section 7," and, therefore, "have reduced expectations of privacy because they are serving their time outside the prison walls." [State v. Cornwell, 190 Wn.2d 296, 301 (2018)]

> Our legislature has codified this exception to the warrant requirement in RCW 9.94A.631(1), which states, "If there is reasonable cause to believe that an offender has violated a condition or requirement of the sentence, a community corrections officer may require an offender to submit to a search and seizure of the offender's person, residence, automobile, or other personal property."
>
> The CCO's search of the offender's property is limited to "property reasonably believed to have a nexus with the suspected probation violation." Cornwell, 190 Wn.2d at 306. . . .
>
> Here, the CCOs had reasonable cause to search Smith's residence and the Samsung smartphone. Smith failed a polygraph test after being "asked about possessing any unauthorized electronic devices" in violation of condition 24.
>
> [Smith's CCO] had previously read Dr. Covell's report and thus knew about Smith's "history of use of internet technology to pursue casual sexual activity, view sexually abusive/exploitative images featuring minors, and to sexually chat with/meet adolescent minors." Based on Smith's failed polygraph examination, [Smith's CCO] suspected Smith "was possibly communicating with minors, looking up victims[] [and] child pornography" in violation of his sentencing conditions.
>
> [Smith's CCO] testified that based on his training and experience, "[e]ach time we have ever done phone searches or home searches or any of that sort, if we do find a secondary cell phone that we're unaware of, it's always resulted in something on there that they're not supposed to have."
>
> Additionally, condition 21 (relating to internet access) "permitted [Smith's CCO] to make random searches of any computer, phone, or computer-related device to which the defendant has access to monitor compliance with this condition." This condition, when combined with [Smith's CCO's] knowledge that Smith may be in possession of an unauthorized smartphone, provided the CCOs with lawful authority to search Smith's residence and the Samsung smartphone, which they believed had a nexus with the suspected SSOSA violation.
>
> Thus, the trial court did not err in admitting evidence of the Samsung smartphone and its contents.

[Some citations omitted, some revised for style; some paragraphing revised for readability]

Result: Affirmance of Snohomish County Superior Court order revoking eligibility of Justin R. Smith for sentencing under the statutory Special Sex Offender Sentencing Alternative.

STATUTORY PROVISION IN CHAPTER 9A.08 RCW THAT PRECLUDES ACCESSORY LIABILITY FOR VICTIMS OF CRIME DOES NOT APPLY TO CONSPIRACY LIABILITY FOR THE SAME CRIMINAL ACTIVITY, NOR IS SUCH LIABILITY OTHERWISE PRECLUDED FOR VICTIMS OF THEIR OWN CONSPIRACIES

In State v. Floe, ___ Wn. App. 2d ___ , 2025 WL ___ (July 29, 2025), defendant loses his creative arguments against liability for (1) conspiracy to commit assault in the second degree, and (2) conspiracy to commit drive-by shooting.

Defendant gave his sister a gun and persuaded her to shoot him at work so that he could file a Workers' Compensation injury claim. In a bench trial, he was convicted of second degree assault, conspiracy to commit second degree assault, drive-by shooting, and conspiracy to commit drive-by shooting. In his appeal to the Court of Appeals, he challenged only the two conspiracy convictions, arguing that he could not convicted of conspiracy of these two crimes because he was a victim of the shooting that he had asked his sister to do.

RCW 9A.08.020(5)(a) provides that "[A] person is not an accomplice in a crime committed by another person if: . . . He or she is a victim of that crime." RCW 9A.08.020(5)(a). In lengthy analysis, the Court of Appeals explains that this provision precluding accessory liability for victims of crimes in which they are also accessories has no application to conspiracy liability.

Result: Affirmance of Mason County Superior Court convictions of Christopher L. Floe for second degree assault, conspiracy to commit second degree assault, drive-by shooting, and conspiracy to commit drive-by shooting

SEXUAL ASSAULT PROTECTION ORDER (SAPO): COURTS DO NOT NEED TO DETERMINE WHETHER THE RESPONDENT IN A SAPO PETITION HAS CRIMINAL CAPACITY OR IS OLD ENOUGH TO FORM CRIMINAL INTENT; CONDUCT THAT WOULD NOT SUPPORT CRIMINAL LIABILITY CAN STILL BE A BASIS FOR OBTAINING A SEXUAL ASSAULT PROTECTION ORDER

In Jones v. Darragh, ___ Wn. App. 2d ___ , 2025 WL ___ (Div. I, July 28, 2025), Division One of the Court of Appeals rules that, in light of recent case law development, in considering petitions for sexual assault protection orders (SAPO), issuing courts do not need to determine whether the Respondent in a SAPO petition has criminal capacity or is old enough to form criminal intent. Thus, the Darragh Opinion concludes that conduct that would not support criminal liability based on statutory capacity to form the criminal intent necessary to commit the alleged crime. can still be a basis for obtaining a sexual assault protection order

The Jones v. Darragh Opinion declares that the Washington Supreme Court decision in DeSean v. Sanger, 2 Wn.3d 329, 336 (2023), abrogated the Court of Appeals decision in Jones v. A.M., 13 Wn. App. 2d 760, 769 (2020); and that DeSean v. Sanger is the controlling decision.

Result: Affirmance of Skagit County Superior Court order denying A.J.'s petition for a sexual assault protection order, and remand of the case for a hearing on the merits.

JUDGE ISSUING A SENTENCE FOR VIOLATING A DV PROTECTION ORDER MAY LAWFULLY GIVE THE DEFENDANT'S CCO POWER TO SET GEOGRAPHICAL BOUNDARIES WITHIN WHICH THE DEFENDANT MUST REMAIN

In State v. Lundstrom, ___ Wn. App. 2d ___ , 2025 WL ___ (Div. I, July 28, 2025), Division One of the Court of Appeals rejects defendant's constitution-based void-for-vagueness challenge to one of the community custody conditions in a King County Superior Court judge's sentence for his conviction for violating a domestic violence protection order. The challenged community custody condition authorized the defendant's Community Custody Officer (CCO) to set the geographical limits within which the defendant must remain.

After discussing and rejecting the case law arguments put forward by defendant, the Lundstrom Opinion closes with the following paragraph:

> This case is different from [the Washington appellate court decisions cited by defendant]. Here, the court did not impose a vague geographical limitation on Lundstrom and then delegate to the CCO the task of defining the limitation. Indeed, it imposed no geographical limitation. Instead, the court complied with its statutory obligation to order Lundstrom to follow certain conditions that the legislature has authorized the CCO to impose. See RCW 9.94A.703(1)(b). And one of the conditions the legislature has determined a CCO must impose on an offender is an order to "[r]emain within prescribed geographical boundaries." RCW 9.94A.704(3)(b).

Result: Affirmance of King County Superior Court community custody condition ordering that, based on his conviction for violating a Domestic Violence Protection Order, Kevin Lars Lundstrom remain within geographical boundaries as set forth by his community corrections officer.

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BRIEF NOTES REGARDING JULY 2025 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 four entries below address the July 2025 unpublished Court of Appeals opinions that fit the above-described categories. I do not promise to be able to 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 effort, 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. Ronnie Lynn Ater, Jr.: On July 7, 2025, Division One of the COA affirms the Skagit County Superior Court conviction of defendant for *one count of possessing depictions of minors engage in sexually explicit conduct*.

The Court of Appeals rejects defendant's argument that a consent search of defendant's phone during his non-custodial conversation with two law enforcement officers in the

vehicle of one of the officer was not voluntary. Therefore, the search was held to be lawful under the totality of the circumstances.

The circumstances are relatively complicated and will not be addressed in detail in this Legal Update entry, other than to address a key part of the Ater Court's legal analysis rejecting defendant's argument that Ferrier warnings are required in order to obtain a voluntary consent to search a cell phone. That analysis reads as follows:

> Ferrier warnings are required in a "knock and talk" situation, which is an "inherently coercive" situation when police officers come to a suspect's door without a warrant suspecting illegal activity but lacking probable cause to search, and they ask for consent to enter and search the home. State v. Leupp, 96 Wn. App. 324, 333-34, 980 P.2d 765 (1999) (quoting State v. Ferrier, 136 Wn.2d 103, 115, 960 P.2d 927 (1998)). In these situations, an officer must also inform the person from whom they seek consent that the person may lawfully refuse to consent to the search, may revoke consent at any time, and can limit the scope of consent to certain areas of their home. . . .
>
> Washington courts have consistently declined to extend Ferrier to searches outside the home. See, e.g., State v. Mercedes, 4 Wn.3d 410, 564 P.3d 971 (2025) (declining to expand Ferrier protections beyond the home); State v. Witherrite, 184 Wn. App. 859, 864, 339 P.3d 992 (2014) ("The cited history of Ferrier and our court's treatment of the home as most deserving of heightened protection under our constitution leads us to conclude that Ferrier warnings need not be given prior to obtaining consent to search a vehicle"); State v. Tagas, 121 Wn. App. 872, 878, 90 P.3d 1088 (2004) (Ferrier warnings not required to search a purse).
>
> Because of the lack of case law extending Ferrier, and the Supreme Court's recent decision in Mercedes, we conclude that Ferrier warnings were not required.

Here is a link to the Opinion in State v. Ater:
https://www.courts.wa.gov/opinions/pdf/854615.pdf

2. State v. Nathaniel Gilbert Craven: On July 7, 2025,Division One of the COA rejects the appeal of defendant from his King County Superior Court convictions for *(A) DUI, and (B) reckless driving*.(note that defendant pleaded guilty to a third charge of violation of an *ignition interlock requirement*).

In lengthy legal analysis, the Craven Court rejects defendant's arguments that (1) the trial court violated his Fourth and Fifth Amendment rights in admitting into evidence his refusal to perform a field sobriety test, and (2) the trial court violated his Second Amendment and Washington constitutional firearms-rights protections in prohibiting him from possessing firearms following his felony conviction.

Here is a link to Opinion in State v. Craven:
https://www.courts.wa.gov/opinions/pdf/856758

3. State v. Jay Wu: On July 15, 2025, Division Two of the COA accepts the concession by the State of trial court error on a pivotal issue, and therefore the Court of Appeals reverses the defendant's Lewis County Superior Court conviction for the *manufacture of marijuana*. The second paragraph of the Opinion summarizes the reasoning and ruling and result of the Opinion as follows:

> Wu argues, and the State concedes, that the search warrant was not supported by probable cause because it was silent as to whether the Department of Agriculture was contacted to rule out the possibility that Wu was legally growing hemp. We accept the State's concession, reverse, and remand for the trial court to vacate Wu's conviction and to conduct any necessary further proceedings.

The Wu Opinion provides the following additional explanation regarding the State's concession:

Wu contends that the search warrant in this case was not supported by probable cause that the suspected grow was an illegal grow as opposed to a licensed grow. The State responds that the affidavit is silent regarding whether the State contacted the Department of Agriculture to determine if there was a permit for hemp production, and that omission leaves open the possibility that Wu was producing hemp lawfully. The State concedes that because facts that are consistent with legal activity do not provide sufficient basis for a search warrant, even if there are also possible criminal explanations, we should vacate Wu's conviction and remand for suppression of the evidence seized.

For explanation to the Court of Appeals by the prosecutor's office of the reason for the concession, see Respondent's Brief in State v. Wu: courts.wa.gov/content/Briefs/A02/603489-Respondent's Brief.pdf.

Here is a link to the Opinion of the Court of Appeals in State v. Wu:
https://www.courts.wa.gov/opinions/pdf/60348-9.25.pdf

LEGAL UPDATE EDITOR'S CROSS-REFERENCE NOTE REGARDING WU: In the March 2025 Legal Update, we digested the published March 11, 2025, Division Two Court of Appeals Opinion in State v. Le. We noted in the March 2025 Legal Update, without addressing the Le Court's legal analysis, that the Court of Appeals rejected in lengthy analysis the defendant's argument that the affidavit in that case failed to establish probable cause for a residential search for a marijuana grow. The Le Court rejected defendant's argument that the affidavit was insufficient on PC because it did not establish that a records check was done to eliminate the possibility that the grow houses were being operated lawfully under Washington law's limited legalization of commercially growing cannabis. Note that we included in the Legal Update entry a note that is provided on the WAPA year-to-date case law update, link at https://waprosecutors.org/caselaw/ :the WAPA editor commented that "*It's still a good idea to include this information.*")

4. State v. Veniamin Nickolay Gaidaichuk: On July 17, 2025, Division Three of the COA affirms the Yakima County Superior Court conviction of defendant from his convictions for *(A) second degree attempted rape of a child, and (B) communicating with a minor for immoral purposes*.

The case arose from an internet sting operation to catch child sex predators. The Court of Appeals rejects defendant's argument that the sting operation involved "outrageous government misconduct." Included in the Court's analysis is the following:

> Outrageous government conduct will be shown when the actions of law enforcement officers are "'so outrageous that due process principles would absolutely bar the

government from invoking judicial processes to obtain a conviction.' For the police conduct to violate due process, the conduct must shock the universal sense of fairness." [State v. Lively, 130 Wn.2d 1, 19 (1996)] . . . .

Lively outlined five factors to consider in determining whether the government's conduct was outrageous: (1) "whether the police conduct instigated a crime or merely infiltrated ongoing criminal activity," (2) "whether the defendant's reluctance to commit a crime was overcome by pleas of sympathy, promises of excessive profits, or persistent solicitation," (3) "whether the government controls the criminal activity or simply allows for the criminal activity to occur," (4) "whether the police motive was to prevent crime or protect the public," and (5) "whether the government conduct itself amounted to criminal activity or conduct 'repugnant to a sense of justice.'" [Lively, at 22} . . . .

Here, there is no evidence that any of these factors are met. There is no evidence that police contacted Gaidaichuk and overcame his reluctance to meet an underage person. Although the original profile picture indicated the female in question was 29 years old, the profile was created in the persona of a 13-year-old female "Anna."

Gaidaichuk, communicating from a profile with the name "Ben," sent the first message. After an exchange of text messages, Anna revealed that she was 13 years old and Gaidaichuk continued the communication.

Nor is there evidence that the government was controlling the criminal activity, had illicit motives, or committed criminal activity to entrap Gaidaichuk. Instead Gaidaichuk made plans to meet Anna in Yakima.

On his way over, he spoke with Anna by phone and the two discussed the topic of sex. When he arrived at the home, [a law enforcement officer], who had been the one texting Gaidaichuk, met him at the door. Gaidaichuk entered the residence and was arrested.

[Some citations omitted, others revised for style; some paragraphing revised for readability]

Here is a link to the Opinion in State v. Gaidaichuk:
https://www.courts.wa.gov/opinions/pdf/402312_unp.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. Starting with the

January 2015 Legal Update, Mr. Wasberg has been presenting a monthly case law update for 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.

The Criminal Justice Training Commission continues to publish monthly issues of the Law Enforcement Digest (LED). Monthly LEDs going back to 2009 can be found on the CTJC's website at https://www.cjtc.wa.gov/resources/law-enforcement-digests.

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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 numbers to access information. Access to the "Washington State Register" for the most recent proposed WAC amendments is at this address too. In addition, a wide range of state government information can be accessed at [http://access.wa.gov]. 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-enforcement-digests].