LEGAL UPDATE FOR WASHINGTON LAW ENFORCEMENT

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

MAY 2025

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NINTH CIRCUIT OF THE UNITED STATES COURT OF APPEALS

CIVIL RIGHTS ACT CIVIL LIABILITY UNDER SECTION 1983 FOR LAW ENFORCEMENT: 2-1 DECISION INVOKES CONSTITUTIONAL DUE PROCESS PROTECTIONS IN DENYING QUALIFIED IMMUNITY TO OFFICERS WHERE THE PLAINTIFFS' ALLEGATIONS ARE THAT THE OFFICERS (A) CONDUCTED A HIGH-SPEED CHASE FOR THE PURPOSE OF HARMING A FLEEING SUSPECT WITHOUT THE OFFICERS HAVING ANY LEGITIMATE LAW ENFORCEMENT PURPOSE, AND (B) SHOCKINGLY FAILED TO SUMMON OR RENDER EMERGENCY SERVICES AFTER THE SUSPECT CRASHED

In Estate of Soakai v. Abdelaziz, ___ F.4th ___ , 2025 WL ___ (9th Cir., May 16, 2025), in a 2-1 decision, the 3-judge Ninth Circuit panel affirms the U.S. District Court judge's denial of defendant police officers' motion for judgment on the pleadings based on qualified immunity in a 42 U.S.C. § 1983 action. The lawsuit was brought by innocent bystanders who were injured by a driver who was fleeing from police when he lost control of his car and crashed into the innocent bystanders at high speed.

The Ninth Circuit staff summary (which is not part of the Ninth Circuit Majority Opinion or Dissenting Opinion) provides the following brief synopsis of those Opinions (note that references in the summary to "the panel" are references to determinations made in the Majority Opinion):

> Plaintiffs alleged that defendants violated their Fourteenth Amendment substantive due process rights by (1) conducting a high-speed chase for the purpose of harming the fleeing suspect in a manner that exceeded any legitimate law enforcement purpose, and (2) failing to summon or render emergency services for plaintiffs after the crash that defendants affirmatively helped to cause.

Addressing plaintiffs' purpose-to-harm claim, the panel held that plaintiffs stated a substantive due process claim by plausibly alleging that, as bystanders, they were injured when defendants conducted a high-speed chase with a purpose to harm the suspect in a manner that exceeded any legitimate law enforcement purpose. Because the law was clearly established before the date of the car chase that defendants' conduct was unconstitutional, defendants [i.e., the law enforcement officers] were not entitled to qualified immunity.

The panel rejected defendants' assertion that to state a Fourteenth Amendment substantive due process claim, a bystander injured by a highspeed police chase must plausibly allege that the officer acted with an improper purpose to harm the bystander specifically. This Circuit's precedent recognizes that an officer owes a duty to all those in the vicinity, including bystanders, to limit their intent to harm to legitimate law enforcement purposes.

Addressing plaintiffs' alternative, narrower state-created danger claim, the panel held that—although the Fourteenth Amendment generally does not confer any affirmative right to governmental aid—plaintiffs plausibly alleged that defendants affirmatively created danger by initiating a car chase that led to a crash and then acted with deliberate indifference to plaintiffs' worsening medical condition by failing to summon help. If plaintiffs' allegations are true, defendants violated clearly established law by acting with deliberate indifference to the injuries that resulted from the collision that defendants affirmatively helped to cause.

Dissenting, Judge Bumatay wrote that the officers were entitled to qualified immunity. The majority adopted a brand-new theory of substantive due process—contrary to precedent and to the Supreme Court's admonition against such judicial overreach—by ruling for the first time that a bystander may assert a substantive due process claim against an officer if the bystander can show that the officer intended to harm someone else. Given that this novel theory of due process conflicts with Supreme Court and Ninth Circuit precedent, [the dissent by Judge Bumatay contends] the law was not clearly established at the time of the accident that intent to harm a suspect is enough to press a due process claim for injuries to bystanders. [The dissent by Judge Bumatay also contends that] [t]he majority also expanded the state-created-danger doctrine to create a new constitutional duty requiring law enforcement officers to render or summon medical aid for civilians harmed by private actors under certain circumstances.

[The Legal Update Editor has added the bolding and the bracketed language, as well as revising some paragraphing in the summary]

The Majority Opinion in Estate pf Soakai provides the following brief summary of the facts:

The facts alleged in this case are jarring and tragic. We must take all plausible allegations as true at this stage of the proceeding. Al Saud v. Days, 50 F.4th 705, 709 (9th Cir. 2022).

On June 25, 2022, in Oakland, California, Officers Jimmy Marin-Coronel and Walid Abdelaziz, police officers of the Oakland Police Department and Defendants in this action, spotted a person who, they believed, had participated in an illegal car rally. Even though the Oakland Police Department's policy authorized high-speed car chases only in

cases involving certain violent crimes, Defendants began pursuing the suspect through busy city streets at speeds exceeding 60 miles per hour.

Allegedly intent on making the suspect crash, Defendants did not turn on their lights or sirens, nor did they report the chase to the dispatcher. Those actions, too, violated departmental policy.

The chase ended when the suspect's car smashed into an area near a popular taco truck, where Lolomania Soakai ("Lolomania") had stopped with his family and friends on the way home from a graduation ceremony. Lolomania suffered a direct hit and died of his injuries in front of his mother, Plaintiff Lavinia Soakai ("Lavinia"), who broke her back in the crash. Other members of their group, including Plaintiffs Daniel Fifita, Ina Lavalu, and Samiuela Finau, also suffered severe injuries.

Despite witnessing the crash, Defendants neither stopped to render aid nor summoned emergency services. Instead, Defendants drove by the scene—still with their lights and sirens off—and did not return until they heard other officers approaching the area of the crash.

When they did return, Defendants pretended not to have been at the scene previously. While still at the site of the crash, Defendants were overheard saying that "they were satisfied the [suspect] appeared injured and hoped that the [suspect] had died in the crash."

[LEGAL UPDATE EDITOR'S NOTE: The Majority Opinion provides lengthy legal analysis to support its conclusions that the officers violated the Due Process rights of the innocent bystander Plaintiffs under two independent rationales, as noted above. The competing views in the Majority Opinion and Dissenting Opinion are of course important are important to those trying to assess the conflicting views regarding the constitutional Due Process theories (see the link to the Majority Opinion and Dissenting Opinion in the case provided above at page 1 in the Table of Contents of this month's Legal Update). However, invoking editor's discretion, I have decided that the analysis in the Majority Opinion and Dissenting Opinion will not be excerpted or further summarized in this Legal Update entry.]

Result: Affirmance by 2-1 vote the denial by the U.S. District Court (Northern District of California) of defendant police officers' motion for judgment on the pleadings based on qualified immunity.

SECOND AMENDMENT AND FELONS WITH GUNS: BY MAJORITY DECISION IN A CRIMINAL CASE, AN 11-JUDGE NINTH CIRCUIT PANEL RULES THAT THE ALL-FELONIES PROVISION OF THE FEDERAL STATUTE AT 18 U.S.C. § 922(g)(1) IS CONSTITUTIONAL; DEFENDANT LOSES HIS ARGUMENT AGAINST TAKING AWAY FIREARMS RIGHTS FOR CONVICTIONS FOR "NON-VIOLENT" FELONIES

In U.S. v. Duarte, ___ F.4th ___ , 2025 WL ___ (9th Cir., May 9, 2025), by majority vote of an 11-judge Ninth Circuit panel, Steven Duarte's conviction for felon in possession of a firearm in violation of 18 U.S.C. § 922(g)(1) is affirmed. Defendant loses his argument that the United States Supreme Court decision in New York State Rifle & Pistol Ass'n, Inc. v. Bruen, 597 U.S. 1

(2022), which clarified the standard for analyzing Second Amendment claims, supports his Second Amendment argument.

Duarte was the only passenger in a car when he tossed a handgun out of the front passenger-side car window as officers were pulling the driver over for a traffic violation. Officers retrieved the handgun. It was subsequently determined that, as the time of the traffic incident and the tossing of the gun, Duarte had a record of five prior felonies. Duarte was convicted the U.S. District Court violating 18 U.S.C. § 922(g)(1) as a felon in possession of a firearm.

After the verdict was entered, the U.S. Supreme Court issued its 2022 decision in Bruen. Defendant Duarte appealed to the Ninth Circuit. He pointed out in his appeal that all of his prior felonies were non-violent felonies. He argued that, under Bruen's focus on the Nation's "historical tradition" of firearm regulation, convicting him for being a felon in possession of a firearm in violation of 18 U.S.C. 922(g)(1) is unconstitutional as applied to persons such as Duarte whose felony convictions were for only "non-violent felonies."

On May 9, 2024, a three-judge Ninth Circuit panel voted 2-1 to accept Duarte's Second Amendment argument, and therefore, the panel voted to reverse the District Court conviction. However, the government's request to the Ninth Circuit for further review was granted, and now an 11-judge panel has, as noted above, reinstated the conviction of defendant Duarte.

Seven of the 11 Ninth Circuit judges on the panel in U.S. v. Duarte join in a Majority Opinion that agrees with the Second Amendment analysis in decisions on this same issue from the Fourth, Eighth, Tenth, and Eleventh Circuits of the U.S. Court of Appeals. The Duarte Majority Opinion notes that some other federal circuit courts have issued decisions that have cast some doubt on the all-felonies application of the statute under the Second Amendment. But the Duarte Majority Opinion does not agree with the analysis in those decisions.

Result: Affirmance of U.S. District Court (Central District of California) conviction of Steven Duarte for possession a firearm as a previously convicted felon in violation of 18 U.S.C. § 922(g)(1).

LEGAL UPDATE EDITOR'S COMMENT: In light of the split of views among the federal circuit courts of appeals, and in light of the current frequency of litigation on the issue in the state and federal courts, it seems likely that the U.S. Supreme Court will accept review on this Second Amendment issue within the next several years.

LEGAL UPDATE EDITOR'S RESEARCH NOTE: Some recent published Washington Court of Appeals decisions reaching the same conclusion as the Ninth Circuit's Duarte decision on the Second Amendment issue in relation to a blanket-felony-bar regarding firearms (under RCW 9.41.040) are:

- **State v. Koch, ___ Wn. App. 2d ___ , ___ 2025 WL ___ (Div. II, April 22, 2025) (Note that Koch also reached the same conclusion in analysis under the Washington constitutional right to bear arms.);**

- **State v. Ross, 28 Wn. App. 2d 644 (Div. I, November 6, 2023), review denied by the Washington Supreme Court, 2 Wn.3d 1026 (2024);**

- **State v. Bonaparte, 32 Wn. App. 2d 266 (Div. II, August 27, 2024);**

- **State v. Olson, 565 P.3d 128, 137-38 (Div. III, March 11, 2025); and**

- **State v. Hamilton, 565 P.3d 595 (Div. I, March 17, 2025).**

The Washington Supreme Court has not yet addressed the issue.

IN THIS CRIMINAL CASE, NINTH CIRCUIT PANEL RULES THAT PAROLEE'S MIRANDA WAIVER WAS GIVEN VOLUNTARILY WHERE, ALTHOUGH THE PAROLEE WAS TAKEN INTO CUSTODY DURING A JOINT OPERATION OF PAROLE OFFICERS AND POLICE OFFICERS, THE ONE-ON-ONE INTERROGATION IN A PATROL CAR WAS DONE BY A LAW ENFORCEMENT OFFICER WITHOUT INVOLVEMENT OF PAROLE OFFICERS

In U.S. v. Watson, ___ F.4th ___ , 2025 WL ___ (9th Cir., May 23, 2025), a Ninth Circuit staff summary (which is not part of the Ninth Circuit Opinion) provides the following synopsis of the Opinion for 3-judge panel:

> The panel affirmed the district court's denial of Tyler Jay Watson's motion to suppress incriminating statements he made to police officers and the fruits thereof in a case in which Watson entered a conditional guilty plea to one count of possession with intent to distribute fentanyl.
>
> Based on information received from a confidential informant, a police task force in Nampa, Idaho began investigating Watson for drug distribution. When law enforcement learned that Watson was on parole, they coordinated with Probation and Parole officers to conduct a compliance search of Watson's vehicle and residence.
>
> After officers found methamphetamine attached to the vehicle's undercarriage, they drove to Watson's residence and conducted a search. While the search was ongoing, Watson remained detained in an officer's patrol vehicle parked down the street. Another officer approached Watson in the back of the patrol car and read Watson his Miranda rights. Watson acknowledged his rights and stated his willingness to cooperate.
>
> Watson then admitted he was holding more of "the product" at his grandmother's home. Following Watson's confession, officers drove to Watson's grandmother's house and obtained her consent to search her garage. Officers discovered and seized fentanyl, methamphetamine, and cash.
>
> Watson argued [in his appeal to the Ninth Circuit] that his supervision agreement's condition requiring that he cooperate with the requests of his probation/parole officer, where cooperation includes being truthful, created a classic penalty situation in which Watson was compelled—under threat of parole revocation—to make incriminating statements to law enforcement in violation of his Fifth Amendment rights.
>
> The panel disagreed. Because Watson's supervision agreement required cooperation and truthfulness with his parole officer, but not all law enforcement officers, the panel could not conclude that a Mirandized interrogation by police in the course of investigating a new, separate offense was involuntarily compelled.

[Emphasis added; some paragraphing revised for readability]

LEGAL UPDATE EDITOR'S NOTE/COMMENT: Important to the Ninth Circuit panel is that there was no evidence that defendant Watson was told that his refusal to answer questions in the interrogation would lead to parole revocation.

Result: Affirmance of U.S. District Court (Idaho) conviction of Tyler Jay Watson of guilty of possession with intent to distribute fentanyl.

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WASHINGTON STATE SUPREME COURT

REASONABLE SUSPICION FOR A DUI STOP BASED ON A CORROBORATED CONTEMPORANEOUS CITIZEN INFORMANT'S REPORT; THE MAJORITY OPINION OF THE WASHINGTON SUPREME COURT REVERSES A 2023 (UNPUBLISHED) DIVISION THREE OUTLIER DECISION; THE MAJORITY OPINION IS LENGTHY AND NUANCED, BUT THE GOOD NEWS IS THAT IT CLEARLY PRESERVES THE LONG-ACCEPTED CONSTITUTIONAL VIEW THAT 911 CALLERS ARE PRESUMED TO BE RELIABLE (THOUGH, OF COURSE, REBUTTABLY) FOR TERRY STOP PURPOSES

In Wenatchee v. Stearns, ___ Wn.3d ___ , 2025 WL ___ (May 15, 2025), the Washington Supreme Court reverses the Division Three Washington Court of Appeals decision that affirmed a Chelan County Superior Court decision that overturned the Wenatchee Municipal Court DUI conviction of defendant. Thus, the Washington Supreme Court has affirmed the Wenatchee Municipal Court conviction of Frank Edward Stearns for DUI.

The Majority Opinion (signed by seven of the nine Justices siting for this appeal) holds that, under the totality of the circumstances, reasonable suspicion for a DUI stop was provided by the combination of: (1) a contemporaneous report regarding a suspect's possible DUI conduct (including repeated staggering) by an eyewitness 911 caller; and (2) an officer's corroboration of the report by observation, after a brief contact with the caller, of suspicious driving behavior by the suspect. A Concurring Opinion by the other two Justices complains that the Majority Opinion should have rejected the element of the reasonable suspicion standard that presumes (rebuttably, of course) that 911 calls from citizen informants are reliable.

The Majority Opinion provides the following introduction to a lengthy Opinion:

> Every day across Washington, people call 911 to report suspected criminal activity and police are dispatched to follow up. Courts recognize that the reliability of such calls or "tips" cannot be taken for granted. False reports, whether intentionally made or resulting from human bias or misperception, can lead to privacy violations and threaten public safety. We therefore require that police establish the reliability of a tip before using it as basis for reasonable suspicion or probable cause justifying a search or seizure. This case provides an opportunity to clarify our analysis, in particular the distinction between the tipster's basis of knowledge and the tip's factual basis.
>
> Police stopped Frank Edward Stearns on suspicion of driving under the influence (DUI) after a 911 caller reported that he seemed drunk and was "staggering all around the place" in a parking lot. The trial court found the stop to be justified but the reviewing courts [i.e., the Chelan County Superior Court and Division Three of the Court of Appeals] reversed.

> We hold that this stop was lawful. The tip received in the 911 call was reliable because the caller was a bystander giving a contemporaneous eyewitness report of DUI to the emergency line, and the officer's observations of Stearns's driving corroborated the caller's report. Additionally, the caller's description of Stearns staggering all around the place both before and after driving, combined with the officer's observations of erratic driving, provided a sufficient factual basis for reasonable suspicion of DUI. Accordingly, we reverse the Court of Appeals and reinstate Stearns's convictions.

[Some paragraphing revised for readability]

The Majority Opinion in Stearns provides the following description of the facts:

> On July 12, 2019, the Wenatchee Police Department received a 911 call about an incident in the parking lot of Cascade Motorsports on Worthen Street. The caller, David Gilliver, reported that a man "seemed very drunk" and was "staggering all around the place." Gilliver said that the man got inside his black crew cab truck and drove it in the parking lot, got out of the truck and staggered again, and got in his truck once more. He described this man as white and 35 years old, wearing a gray hat, blue shirt, and jeans.
>
> [Officer A] was dispatched to respond to the 911 call around 6:39 PM, and she reached the scene within a minute or two. She approached Gilliver, who was standing next to his own black crew cab truck. As she got out of her car to contact Gilliver, he pointed to the other black truck, which was about to pull out of the parking lot, and said something to the effect of "'That's him! He's wasted!'"
>
> [Officer A] could see through the open driver's side window of the truck pulling out of the parking lot that its driver fit the description in the 911 call. She promptly started to follow the truck but, due to heavy traffic, ended up about four cars behind the truck on Worthen Street.
>
> She could still see the truck and saw it weave toward the center line, but she was too far behind to see whether it actually crossed the center line. She also noticed the truck continued to gain distance from her while she was traveling near the speed limit, leading her to believe the driver was speeding. Her patrol vehicle was not equipped with radar, and she did not pace the truck or otherwise directly measure its speed.
>
> In order to pass the cars between her and the truck, [Officer A] activated her emergency lights, but she deactivated the lights before she was directly behind the truck.
>
> > Majority Opinion's Footnote 2: *Stearns concedes that this use of emergency lights did not constitute a seizure because [Officer A] was far enough behind his truck when she deactivated the lights that he would not have reasonably believed he was being pulled over.*
>
> She continued to follow the truck through a roundabout, the design of which requires drivers to curve to the left while proceeding around the roundabout and then curve to the right when exiting the roundabout onto a street. She observed the truck almost hit the curb while exiting the roundabout but jerk at the last second to correct its angle. She did not observe the truck's tires actually hit the curb or cross the center line.

Shortly after exiting the roundabout onto Riverside Drive, the truck appeared to [Officer A] to begin pulling over. While the truck was stopping, [Officer A] observed that the top brake light of the truck did not illuminate. She activated her emergency lights in order to effect a traffic stop.

[LEGAL UPDATE EDITOR'S NOTES REGARDING THE MAJORITY OPINION'S DESCRIPTION OF THE FACTS:

1. **As noted in the Majority Opinion's footnote 2 quoted above, it was uncontested in this case that the activation by Officer A of her emergency lights to signal Stearns to stop was a "seizure" under Washington case law defining seizure.**

2. **The Majority Opinion's description, continued immediately below, of the events that followed Officer A's activation of her emergency lights to stop Stearns is irrelevant to the question of whether the earlier Terry stop in this case was supported by reasonable suspicion.**

3. **The otherwise-arguable theoretical issue of whether the stop of Stearns was independently justified by the fact that his top brake light did not illuminate was not preserved for review at the Washington Supreme Court.]**

The truck then began driving forward on Riverside Drive again, continued for roughly 50 feet, and pulled into a parking lot. As it did so, [Officer A] observed both of the truck's driver side tires roll over the curb. Now joined by [Officer B] in a car behind her, she followed the truck and watched as it drove into two parking spots and pulled forward so much that its front end was on the curb, blocking the sidewalk.

The driver of the truck, Stearns, exited and began walking toward the officers. [Officer A] commanded Stearns to show her his hands, and he "looked confused at first." He stumbled as he walked toward her and then put his hands in the air.

[Officer B] approached Stearns and handcuffed him, and [Officer A] informed Stearns that he was under arrest for failure to obey a police officer. She immediately noticed "an overwhelming odor of intoxicants"; "bloodshot, watery, and droopy" eyes; and speech "so slurred [she] could barely understand him."

A search of Stearns's name revealed that he had a suspended license and was required to drive with an ignition interlock device; officers did not find such a device in his truck. Stearns was taken to jail, and roughly 1 hour and 40 minutes after the 911 call, he provided breath samples that measured his blood alcohol content at over three times the legal limit for DUI.

[Some paragraphing revised for readability; citations to the lower court record omitted; bracketed and bolded language provided by Legal Update Editor]

The lengthy Majority Opinion rejects the arguments made by the defendant, by an amicus participant, and in the two-Justice Concurring Opinion that argued against the longstanding rebuttable legal presumption of reliability of citizen informants. The following are select excerpts from the Majority Opinion's legal analysis:

As our analysis has developed in the case law, we have, at times, used the phrase "factual basis" in a way that appears interchangeable with "basis of knowledge."

. . . .

We take this opportunity to clarify the definition of both terms and how they fit into our analysis of reasonable suspicion. "Factual basis" refers to the requirement for all Terry stops that "the police officer must be able to point to specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant that intrusion." . . . . Factual basis is always necessary to establish reasonable suspicion arising from a tip, whether the facts come from details in the tip itself, corroborating observations, or some combination thereof.

"Basis of knowledge" refers to how the tipster gathered their facts, such as through their own senses (e.g., sight, sound, smell) or through a particular means or intermediary (e.g., eavesdropping, looking through binoculars or at the reflection in a mirror, hearing from a friend). As we reaffirmed in [State v. Z.U.E., 183 Wn.2d 610 (2015)], basis of knowledge need not be shown in order to establish reasonable suspicion so long as the totality of the circumstances indicate the tip's reliability.

I. The tip was reliable because Gilliver was a bystander reporting to 911 his personal observations of an active DUI as it happened, and [Officer A's] observations corroborated his report

The circumstances surrounding a tip and the way it is communicated can indicate its reliability. [State v. Z.U.E., 183 Wn.2d 610 (2015)]. Many of the factors present here were found in Z.U.E. to "bolster the reliability of the tip": "the relayed call was made by a citizen eyewitness, it was made contemporaneous to the unfolding of the events, [and] it came through an emergency 911 line rather than the police business line." State v. Z.U.E..; see also Navarette v. California, 572 U.S. 393, 134 S. Ct. 1683, 188 L. Ed. 2d 680 (2014) (holding that same factors supported reliability of anonymous tip).

Citizen informants "are deemed presumptively reliable." State v. Gaddy, 152 Wn.2d 64 (2004) . . . .

> Court's footnote 4: *We use the term "citizen informant" to mean a bystander who appears uninvolved in the crime they are describing, as opposed to someone connected with the events, such as a confidential informant. We do not intend to make any distinction based on status as a United States citizen, nor do we read any prior cases using this term to have done so*.

On the other hand, we have said that anonymous informants are typically unreliable. [State v. Lesnick, 84 Wn.2d 940 (1975)]. In [State v. Sieler, 95 Wn.2d 42 (1980)], we held that "the reliability of an anonymous telephone informant is not significantly different from the reliability of a named but unknown telephone informant." These statements in Lesnick and Sieler should be considered in historical context.

They predate the technological advancements of modern 911 systems, which allow law enforcement to identify caller location and identity, for example based on cellular data. Considering these systems, recent decisions have repeatedly held that 911 calls are more reliable precisely because callers risk losing their anonymity and can be held

accountable for false reports. See, e.g., Z.U.E., 183 Wn.2d at 621; Navarette, 572 U.S. at 399; State v. Howerton, 187 Wn. App. 357, 371-72, 348 P.3d 781 (2015); United States v. Terry-Crespo, 356 F.3d 1170, 1176 (9th Cir. 2004) . . .

This does not mean that courts treat all 911 calls as presumptively or per se reliable without further scrutiny. See, e.g., State v. Saggers, 182 Wn. App. 832, 844, 332 P.3d 1034 (2014) (distinguishing Navarette and holding tip unreliable because 911 call was made on a pay phone and "officers were distinctly aware of the possibility" that defendant's disgruntled acquaintance was the actual caller).

Stearns in his supplemental briefing and WACDL in their amicus briefing urge us to explicitly hold that the dissent in Navarette is more consistent with Washington law than the majority. . . . They argue that the fact a call is made to the emergency line has no bearing on its reliability because callers are unaware of the technological advancements behind modern 911 systems. They also argue that even if modern 911 calls are more reliable because callers know that technology can identify them and that they can be held accountable for false statements, this reliability is undermined by the possibility that a caller will borrow or steal another person's device to make the 911 call. . . .

Without a factual record that implicates these questions and full briefing on both sides, we decline to address whether the Navarette majority or dissent approach is more consistent with Washington law. It is sufficient to observe that the officers here were not aware of any circumstances suggesting Gilliver gave a fake name, used another person's cell phone, or had any motive to make a malicious and fraudulent 911 call against Stearns.

A citizen informant's reliability is further enhanced when they are an eyewitness and when they report their tip contemporaneously or immediately after the events they describe. . . . Police may not simply assume that an informant is an eyewitness or that their report is contemporaneous, though this may often be inferred from the circumstances. . . .

Here, Gilliver's call contained visual descriptions of Stearns's appearance and described Stearns's actions as they unfolded. When [Officer A] arrived only a few minutes after the call, Stearns was just pulling out of the parking lot and Gilliver pointed to Stearns's truck, exclaiming something to the effect of "'That's him! He's wasted!'" This further suggests that Gilliver had been describing his personal observations of Stearns's recent actions inside the parking lot as they occurred, a fact that weighs in favor of his tip's reliability.

The reliability factors mentioned in Z.U.E. and Navarette should also be considered in the context of our evolving understanding of human behavior, which necessarily informs the reasonable inferences to be drawn. . . . Our past descriptions of informants build on these assumptions and describe the contrast between professional informants on the one hand, who are motivated by the concessions offered to them by law enforcement, and citizen informants, who are motivated solely by their desire to report events to authorities, justifying an inference of reliability.

Z.U.E. and Navarette built further on this contrast by recognizing that 911 callers are often, but not always, citizen informants rather than professional informants. Neither

case considered the possibility of a citizen informant whose motivation and perceptions are colored by unconscious bias.

Our awareness of unconscious biases has developed in the years since Z.U.E. and Navarette.[this Legal Update entry omits the Stearns Majority Opinion's citation to a 2020 letter by the Washington Supreme Court]

Even when a 911 caller is not motivated by malice and reports a crime that they genuinely believe to be occurring, courts must consider the possibility that implicit bias caused them to misconstrue the behavior they observed as criminal. . . . In particular, courts must be aware of the prevalence of 911 calls urging police to investigate Black people for "all kinds of daily, mundane, noncriminal activities" that the caller alleges constitute a crime or a threat to their safety. . . .

> **[Legal Update Editor's Comment: The Stearns Majority Opinion does not provide any guidance regarding how officers and courts are to make an assessment of possible "unconscious bias" of citizen informants or other informants.**

Courts can better safeguard private affairs not by removing from consideration the fact that a tip came from a citizen informant making a 911 call but, rather, by adding consideration of unconscious bias to the totality of circumstances.

Recognizing the need to carefully consider the impact of implicit bias in every case, there is no suggestion here that it impacted the reliability of Gilliver's tip, which made no overt or implicit reference to Stearns's race aside from a simple visual description and did not express any personal fear or describe any behavior perceived as threatening to Gilliver. Without more, the circumstances here do not indicate that conscious or unconscious bias lessened the reliability of Gilliver's tip.

. . . .

Police may also confirm the reliability of a tip through corroboration, either by independently observing the reported criminal activity or by observing that the informant obtained the information in their tip in a reliable fashion. . . .[Z.U.E.] Corroboration of merely innocuous facts, such as a suspect's appearance, is insufficient. .[Z.U.E.] The city points to three independent observations that [Officer A] made of Stearns's driving that corroborate the alleged crime of DUI: Stearns nearly crossing the center line, Stearns nearly hitting a curb and then jerking his truck to the right as he exited the roundabout, and Stearns's speeding and speed fluctuation. Under the totality of the circumstances test, we must consider these observations in the aggregate, rather than take a "divide-and-conquer" approach. [State v. Howerton, 187 Wn. App. 357 (2015)].

. . . . We conclude that [Officer A's] three observations of Stearns's erratic driving, taken together, provided some corroboration of Gilliver's report of DUI.

The city also argues that [Officer A] was able to confirm, through her contact with Gilliver in the parking lot, that Gilliver gathered his information in a reliable fashion. Based on the extremely short time it took for [Officer A] to arrive after the 911 call and Gilliver's almost immediate exclamation when he pointed to Stearns driving away, it was reasonable for her to conclude that Gilliver was the caller. . . . The fact that Stearns was

just beginning to pull out of the parking lot as [Officer A] arrived also made it reasonable for her to infer that Gilliver had just observed his behavior from that vantage point. Of course, she was not on the scene when Gilliver made the 911 call and therefore had no way of observing details such as how close Gilliver was to Stearns or whether his view was unobstructed, which could have strengthened this type of corroboration.

Lastly, as we consider the totality of the circumstances, it is important to include the potential immediate danger of the reported crime. "[T]he seriousness of the criminal activity reported by an informant can affect the reasonableness calculus which determines whether an investigatory detention is permissible." . . . Drunk drivers pose a threat to everyone on the road, and officers must be able to take action to prevent a potentially imminent accident." . . . Still, potential immediate danger to the public is not a "substitute for a reliable informant." . . .

We hold that the totality of the circumstances indicate that Gilliver's tip was reliable. Gilliver was a citizen informant who used the 911 system to give an eyewitness account contemporaneous with events indicating an active DUI. The circumstances do not indicate that Gilliver's call was malicious and fraudulent, nor that conscious or unconscious bias played a role in his perception of Stearns's behavior or his decision to call 911. . . .

II. Gilliver's observations of Stearns "staggering all around the place" and driving his truck in the parking lot, combined with [Officer A's] observations of Stearns's driving, provided a sufficient factual basis for reasonable suspicion of DUI

Even when a reliable tip alleges a crime posing an imminent danger to the public, police must also have a sufficient factual basis to form reasonable suspicion of that crime. When a tip is reliable, that means only that the officer can treat the facts communicated in the tip as true, as if the officer observed the facts personally. Those facts, combined with any of the officer's own observations, must still give rise to a reasonable suspicion that criminal activity is occurring in order to justify the officer's decision to execute a Terry stop.

Reasonable suspicion does not require an officer to be completely certain of criminal activity before making an investigative stop. . . . While the State bears the ultimate burden of proving that a warrantless seizure is lawful, a Terry stop requires only reasonable suspicion, which is less than the probable cause needed for an arrest or warrant and significantly less than the burden of proof at trial. We have described reasonable suspicion as "a substantial possibility that criminal conduct has occurred or is about to occur." . . . .

. . . .

While it is not necessary to rule out all innocent causes of behavior, courts should keep in mind other circumstances that could cause a person to stagger, appear sluggish, or slur their speech besides the influence of drugs or alcohol. For example, a person observed staggering could be experiencing some temporary loss in balance or could have a medical condition or disability affecting their motor control and gait. Courts must be conscious of the history of police brutality against people with disabilities, often due to misconstruing elements of their disability as aggression, defiance, or resisting arrest. . . .

> Courts must also recognize that because Black, Indigenous, and other People of Color are subjected to investigative stops at disproportionately higher rates than white people, they are most at risk of having their innocent actions misconstrued for crimes and having a brief stop escalate to a violent altercation. . . . Even if a quick breath sample or field sobriety test could exonerate an innocent driver pulled over for DUI, courts should not downplay the fear, harm, and risk of escalation that comes with any seizure by police, no matter how brief. Courts must carefully examine the full arc of facts in each case—from the moment the tip is communicated to the moment the investigative stop is initiated—in the context of these systemic biases.
>
> . . . . A report that a person is "staggering all around the place" suggests more than poor balance, and given the accessibility of alcohol to adults, this behavior raised a substantial possibility that Stearns was intoxicated.
>
> Gilliver described two discrete instances of Stearns's apparently intoxicated behavior, both before and after driving his truck within the parking lot. [Officer A] also observed three discrete instances of erratic driving, more than the single incident that was sufficient for reasonable suspicion of DUI in Navarette. . . . After carefully examining the totality of the circumstances, we conclude that Gilliver's tip, corroborated by [Officer A's] observations, provided a sufficient factual basis to stop Stearns on reasonable suspicion of DUI.
>
> CONCLUSION
>
> Law enforcement officers may effectuate a Terry stop based on a 911 caller's tip when the tip is reliable and contains a factual basis for reasonable suspicion of a crime. Both parts of the test are met here, because Gilliver's report of an active DUI was made under circumstances indicating reliability, [Officer A's] observations of erratic driving corroborated the allegations, and those observations combined with the facts communicated in the tip provided a sufficient factual basis for reasonable suspicion of DUI. Because the stop of Stearns's vehicle was lawful, we reverse the Court of Appeals and reinstate Stearns's convictions.

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

The lengthy Concurring Opinion (authored by Justice Whitener and joined by Justice González) begins with the following summary of the Concurring Opinion's view that "citizen informants" should not be deemed to be "presumptively reliable":

> I join the majority in its result as to the specific facts of this case. I write separately to highlight the missed opportunity presented here to address the limitations of our reliance on an outdated and unrealistic view of analyzing the indicia of reliability of a "citizen informant's" 911 tip.
>
> Our state has a long history as a leader in protecting the privacy rights of its citizens. The protections guaranteed by article I, section 7 of our state constitution are "qualitatively different from those provided by the Fourth Amendment to the United States Constitution." State v. McKinney, 148 Wn.2d 20, 26 (2002). Our state constitution provides greater protection. The legal underpinning regarding how we analyze the reliability of "citizen informants" for all of Washington's citizens is squarely before us.

> Unfortunately, the majority continues to see the use of 911 calls as premised on a desire of a citizen informant to be helpful or to help improve public safety. Today, 911 calls are routinely misused in furtherance of illegitimate purposes that are often grounded in racial and ethnic animus or even revenge. Unlike the majority, I believe citizen informants can no longer be deemed "'presumptively reliable'" just because they call 911. Majority at 11 (quoting State v. Gaddy, 152 Wn.2d 64, 73, 93 P.3d 872 (2004)).

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

Result: Reverses Washington Court of Appeals decision and Chelan County Superior Court decision and thus affirms the Wenatchee Municipal Court conviction of Frank Edward Stearns.

LEGAL UPDATE EDITOR'S COMMENT: The Stearns Majority Opinion includes the following statement: "Although our analysis of reliability follows the same framework as Fourth Amendment law, 'our state constitution generally requires a stronger showing by the State.'" [State v. Z.U.E., 183 Wn.2d 610, 618 (2015)]." However, nothing in the Stearns Majority Opinion – and nothing in any published Washington appellate court opinion of which I am aware expressly states that the Washington Constitution, article I, section 7, has a different "reasonable suspicion" standard than the U.S. Supreme Court's Fourth Amendment. My guess is that a majority of the U.S. Supreme Court would not incorporate into the Fourth Amendment "reasonable suspicion" standard a requirement that officers and judges consider the possibility of "unconscious bias" of a citizen informant or other informant. Officers whose actions are governed by the Washington constitution will, however, want to give some thought and seek some guidance for answering questions from criminal defense attorneys and courts relating to the concept of considering the possibility of "unconscious bias" of informants.

LEGAL UPDATE EDITOR'S RESEARCH-GUIDANCE NOTES: For some discussion of Washington and federal case law relating to the issue of the reasonable suspicion standard that justifies a Terry seizure (and some related matters), see the following two items on the "Law Enforcement Digest" internet page of the Criminal Justice Training Commission at https://www.cjtc.wa.gov/resources/law-enforcement-digests.

1. See pages 114-128 of Pam Loginsky's comprehensive and clear 2015 outline (still essentially current with the exception, of course, of no discussion of the May 15, 2025, Washington State Supreme Court Stearns decision regarding the issues relevant to "reasonable suspicion" and other related matters at pages 114-128) Confessions, Search, Seizure and Arrest: A Guide for Police Officers and Prosecutors May 2015, By Pamela B. Loginsky, former Staff Attorney, Washington Association of Prosecuting Attorneys. Ms. Loginsky's Guide can also be found on the internet at the WAPA internet "Manuals" page at https://waprosecutors.org/manuals/

2. See pages 7-10 of John Wasberg's Law Enforcement Legal Update Outline: This article/outline is updated at least once each year. It was last updated through July 1, 2024.

WASHINGTON STATUTE RESTRICTING LARGE CAPACITY MAGAZINES (LCMs) FOR FIREARMS IS HELD IN 7-2 DECISION TO BE VALID UNDER THE FEDERAL CONSTITUTION'S SECOND AMENDMENT AND UNDER THE COUNTERPART

WASHINGTON STATE CONSTITUTIONAL PROTECTION OF FIREARMS RIGHTS; MAJORITY OPINION ASSERTS: (1) THAT LCMs ARE NOT "ARMS," AND (2) LCMs ARE NOT AN ANCILLARY RIGHT THAT IS INHERENTLY NEEDED TO POSSESS AND USE FIREARMS IN SELF DEFENSE

In State v. Gator's Custom Guns, Inc., ___ Wn.3d ___ , 2025 WL ___ (May 8, 2025), the Washington Supreme Court addresses a constitutional challenge to Engrossed Substitute Senate Bill 5078 (ESSB 5078) [67th Leg., Reg. Sess. (Wash. 2022)] which prohibits the manufacture, distribution, importation, and sale of firearm magazines with the capability of holding more than 10 rounds of ammunition.

The Washington Attorney General's Office initiated civil litigation against Gator's Custom Guns Inc. for allegedly violating ESSB 5078. Gator's Custom Guns responded by arguing that ESSB 5078 violates the right to bear arms that is protected by both (1) article I, section 24 of the Washington Constitution, and (2) the Second Amendment to the United States Constitution.

In a 7-2 decision, the Washington Supreme Court holds that ESSB 5078 does not violate either the Washington or the United States constitutional protection of the right to bear arms. The Washington Supreme Court Majority Opinion asserts that its ruling is based on two independently sufficient legal rationales: (1) large capacity magazines (LCMs) are not "arms" within the meaning of either constitutional provision; and (2) the right to purchase LCMs is not an ancillary right necessary to the realization of the core right to possess a firearm in self-defense.

Dissenting Justices Gordon McLoud and Whitener disagree with both rationales in a 34-page Dissent authored by Justice Gordon McLoud and concurred in fully by Justice Whitener.

Result: Reversal of Cowlitz County Superior Court order that held to be unconstitutional ESSB 5078, 67th Leg., Reg. Sess. (Wash. 2022).

LEGAL UPDATE EDITOR'S COMMENT: Time remains for Gator's Customs Guns to request review of this decision by the U.S. Supreme Court.

U.S. CONSTITUTION'S SIXTH AMENDMENT CONFRONTATION CLAUSE IS HELD TO BAR CRIME LABORATORY SUPERVISOR FROM TESTIFYING ABOUT TEST RESULTS REACHED BY A NON-TESTIFYING SUBORDINATE

State v. Hall-Haught, ___ Wn.3d ___ , 2025 WL ___ (May 29, 2025), the Washington Supreme Court's lead Opinion that is signed by seven of the nine Justices on the decision summarizes the Court's ruling as follows in the introduction to the Opinion:

> The Washington State Constitution, like the Constitution of the United States, guarantees criminal defendants the right to confront witnesses against them in a criminal prosecution. WASH. CONST. art. I, § 22; U.S. CONST. amend. VI. This case revisits the issue of whether the confrontation clause is violated when forensic test results are admitted into evidence without testimony from the lab analyst who conducted the testing.
>
> The trial court held that it was constitutional for the forensic test results obtained by a lab technician who performed the testing to be admitted into evidence through the testimony of a laboratory supervisor. The Court of Appeals affirmed the trial court's decision

holding that Ms. Hall-Haught's confrontation rights were not violated "[b]ecause the supervisor who testified and was available for cross-examination had independently reviewed the testing and the results and testified to her own opinions about them." . . .

We reverse the Court of Appeals.

This Washington Supreme Court decision was controlled by the U.S. Supreme Court 2024 decision in Smith v. Arizona, 602 U.S. 779 (2024) (holding that when an expert conveys an absent analyst's statements in support of the expert's opinion, and the statements provide that support only if true, then the statements come into evidence for their truth, and therefore the statements are subject to a Sixth Amendment Confrontation Right challenge).

Result: Reversal of decision of the Washington State Court of Appeals that affirmed the Island County vehicular assault conviction of Samantha Hall-Haught; the case is remanded for re-trial.

LEGAL UPDATE EDITOR'S NOTE: The *Weekly Update for the Week of May 27, 2025,* on the WAPA CASE LAW internet site (https://waprosecutors.org/caselaw/), provides the following notes regarding this decision:

> **Confrontation clause – The confrontation clause prohibits crime laboratory supervisors from testifying about test results reached by a non-testifying subordinate. If the ultimate opinion hinges upon whether a statement from a lab analyst is true, that analyst must testify for the ultimate opinion to be admissible. *State v. Hall-Haught*, No. 102405-3 (May 29, 2025).**
> ***([WAPA] Editor's note: Justice González' points out in a brief concurrence that it remains unclear what statements that form the basis of an expert's opinion must be subject to cross examination.)***

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WASHINGTON STATE COURT OF APPEALS

IN THIS CRIMINAL CASE, THE PRIVILEGE FOR SEXUAL ASSAULT ADVOCATES AT RCW 5.60.060(7) IS HELD TO APPLY TO A VICTIM'S COMMUNICATIONS WITH A UNIVERSITY OF WASHINGTON VICTIM ADVOCATE WHOSE OFFICE IS LOCATED AT UWPD

In State v. Jobe, ___ Wn. App. 2d ___ , 2025 WL ___ (Div. I, May 19, 2025), defendant Ebrima O. Jobe loses his appeal from his conviction for rape in the second degree.

One of defendant's arguments was that trial court erred in concluding that records of the victim's communications with a University of Washington (UW) victim advocate were protected from disclosure based on a statutory privilege for sexual assault advocates at RCW 5.60.060(7). He argued that the privilege does not apply as to this witness for two reasons: (1) because the victim advocate's office is located at the UW Police Department, and (2) in defendant's view, the function of the advocate's role with the UW Student Life program is inconsistent with that of a true sexual assault advocate.

In key part, the Jobe Court's rejection of defendant's challenge that is grounded in the location of the advocate's officer is as follows:

> Here, even if Adams's e-mail and physical office are within UWPD, the evidence shows that Adams is independent from the UWPD and her records are not accessible to law enforcement. Also, her work relevant to this case focused on "trauma-informed support," which is within the statutory definition of "sexual assault advocate" as she provided "information, medical or legal advocacy, counseling, or support to victims of sexual assault." RCW 5.60.060(7)(a). Jobe's argument that she is not a sexual assault advocate within the meaning of the statute is unavailing.

And the Jobe Court rejects under the following analysis defendant's argument that the advocate's broader role in the UW Student Life program does not qualify her for the statutory privilege:

> The State argues that this is an incorrect reading of the statute because nothing in the statutory language requires sexual assault advocacy "to be a unit or program's exclusive function." Nor does the statutory language mandate the sexual assault advocate to be part of a larger defined "program" or "unit," an interpretation the State characterizes as "overliteral" and contrary to the legislature's intent.
>
> The State contends that "community sexual assault program[s]" are designed to provide "community-based social services" which would logically include "sexual assault advocacy." Therefore, a sexual assault advocate working under the auspices of a community-based sexual assault program that is part of a larger social service agency is included in the protection of RCW 5.60.060(7).
>
> Again, we agree with the State. The statutory language of RCW 5.60.060(7) defines "sexual assault advocate" broadly and includes "the employee or volunteer from a community sexual assault program or underserved populations provider, victim assistance unit, program, or association, that provides information, medical or legal advocacy, counseling, or support to victims of sexual assault" or is designated by the victim to accompany them to receive health care or to proceedings concerning the alleged assault.
>
> Consequently, the list of persons and entities in the first part of the definition is limited only by the functions of the entity; in other words, the entity must "provide[] information, medical or legal advocacy, counseling, or support" or be designated to accompany the victim to certain appointments. Neither the language nor the purpose of the statute support interpreting it to require that the advocate be working with a program that provides only services to sexual assault survivors.

[Some paragraphing revised for readability]

Result: Affirmance of King County Superior Court conviction of Ebrima O. Jobe for second degree rape.

CRIMINAL DEFENDANT LOSES HIS CHALLENGE TO THE SUFFICIENCY OF EVIDENCE OF TRAFFICKING: RCW 9A.40.100'S PROHIBITION ON HUMAN TRAFFICKING INCLUDES CAUSING A PERSON TO EXCHANGE SEX WITH ONE'S SELF AND IS NOT LIMITED TO CAUSING A PERSON TO EXCHANGE SEX FOR VALUE WITH A THIRD PARTY

In State v. Callahan, ___ Wn. App. 2d ___ , 2025 WL ___ (Div. I, May 19, 2025), Division One of the Court of Appeals rejects the defendant's sufficiency-of-the-evidence challenge to his conviction for human trafficking in the second degree under RCW 9A.40.100. The State's evidence was that defendant caused the child victim to engage in sex with him (and not anyone else) by threatening – if she did not continue to have sex with him – to stop supporting her and to return her to a former undesirable living arrangement.

RCW 9A.40.100(3) establishes the crime second degree trafficking as follows:

> (3) A person is guilty of trafficking in the second degree when such person recruits, entices, harbors, transports, isolates, solicits, provides, obtains, buys, purchases, maintains, or receives by any means another person and:
>
> (a) Knows, or acts in reckless disregard of the fact, that force, fraud, or coercion will be used to cause the person to engage in forced labor, involuntary servitude, a sexually explicit act, or a commercial sex act; or
>
> (b) **Such person knowingly, or in reckless disregard, causes a person under 18 years of age to engage in a sexually explicit act or commercial sex act**, or benefits financially or by receiving anything of value from participation in a venture that has engaged in acts set forth in (a) or (b) of this subsection; provided, that it is not a defense that such person did not know, or recklessly disregarded the fact, that the other person was under 18 years of age or believed the other person was older, as the case may be.

[Emphasis added]

In key part, the explanation by the Callahan Court as to the sufficiency of the evidence of second degree trafficking is as follows:

> L.M. testified that beginning at age nine, Callahan caused her to engage in several acts of sexual contact and sexual intercourse. She said she often resisted those acts, but Callahan would threaten to return her to California if she refused. L.M. understood this to mean that she would "end up back with [her] parents" if she did not do what he wanted. And L.M. did not want to return to her parents.
>
> Viewing L.M.'s testimony and all inferences from it in the light most favorable to the State, a rational trier of fact could conclude that Callahan caused L.M. to engage in acts of sexual contact and intercourse with him in return for ongoing housing, food, and support of her basic needs—things of value.
>
> Callahan says we should interpret the trafficking statute to apply only "when children are treated as a commodity between a buyer and seller, thus requiring participation of a third party." He acknowledges that no Washington authorities support this position. Instead, he argues we should follow United States v. Elbert, 561 F.3d 771 (8th Cir. 2009), which he claims "supports the interpretation that a charge of trafficking requires the participation of a third party in the commercial sex act."
>
> But Callahan's argument fails for at least two reasons. First, the legislative intent of the trafficking statute is plain, so we need not engage in statutory construction. And second, even if we looked to Elbert for guidance, that case does not support Callahan's argument.

. . . .

Because the State presented sufficient evidence that Callahan harbored, transported, obtained, or received L.M., that he knew she was under the age of 18, and that he caused her to engage in a commercial sex act, we affirm his conviction for trafficking in the second degree.

. . . .

RCW 9A.40.100(6)(a) defines "commercial sex act" as "any" sexual contact for which something of value is given or received by "any" person. We have repeatedly construed the word "any" to mean "every" and "all." . . . . So, the plain language of the statute expresses a legislative intent to include every exchange of sex for value as a commercial sex act.

The broad language does not limit commercial sex acts to sexual contact with a third person. Indeed, it would be an absurd result to proscribe trafficking as the harboring of minors for the purpose of sex acts with third parties but not the harboring of minors for the purpose of sex acts with the harborer. Both result in the same harm—harboring children for sexual exploitation.

> Court's footnote 10: *We note that Callahan points to no other crime that would proscribe such conduct. While child rape (RCW 9A.44.073), child molestation (RCW.9A.44.083), and sexual misconduct with a minor (RCW 9A.44.093) proscribe sexual contact with a child, they do not address the acts of harboring, transporting, obtaining, or receiving the child and causing the child to exchange sex for something of value. So, under Callahan's theory, a defendant could avoid punishment for those acts so long as he causes the child to exchange sex with himself for value rather than with a third party.*

[Some paragraphing revised for readability; citation omitted; one footnote omitted]

Result: Affirmance of Clallam County Superior Court conviction of Patrick Michael Callahan for human trafficking in the second degree. Note that the Defendant's appeal did not challenge his other convictions in the case for (A) sexual misconduct with a minor in the first and second degree; (B) rape in the third degree; and (C) special allegations of crimes against a minor with sexual motivation.

DIVISION THREE PANEL ISSUES 2-1 DECISION REJECTING A MURDER DEFENDANT'S ARGUMENT THAT THE STATE IMPROPERLY INJECTED CULTURAL AND RELIGIOUS BIAS INTO THE TRIAL

In State v. Darraji, ___ Wn. App. 2d ___ , 2025 WL ___ (Div. III, May 22, 2025), a Division Three panel upholds by a 2-1 decision the second degree felony murder conviction of defendant (and the panels agrees in an unpublished part of the Majority Opinion to accept the State's concession that the evidence in the case does not support defendant's conviction for felony harassment; the latter issue is not addressed in this Legal Update entry).

In its introductory paragraphs, the Majority Opinion summarizes the decision as follows:

> Prosecutors are prohibited from injecting improper bias into a trial by playing into religious or cultural prejudices. But not all references to religion or culture play into improper bias. When relevant and grounded in the evidence, it is not improper for a prosecutor to present testimony or argument related to religion and culture.
>
> Indeed, such evidence may be necessary to prove a fact at issue, such as motive. That is what happened in this case.
>
> The State charged Yasir Darraji with second degree felony murder and felony harassment. The State's evidence was that Yasir, an Iraqi immigrant, was upset that his former wife, Ibtihal Darraji, had changed her behavior and beliefs in ways that did not conform to Iraqi culture. Yasir himself framed his concerns about Ibtihal in terms of his Iraqi culture and Islamic beliefs.
>
> After police found Ibtihal's murdered body inside a burning vehicle, the investigation focused on Yasir, largely due to evidence of his admitted disapproval of Ibtihal's behavior, which he described as culturally and religiously motivated. Given this specific factual circumstance, Yasir's religious beliefs and cultural affiliation were relevant to the State's case. It therefore was not improper for the State to present evidence and arguments pertaining to religion and culture to the jury.
>
> We affirm Yasir's conviction for second degree murder but reverse his conviction for felony harassment based on insufficient evidence. Otherwise, we find no error and remand with instructions to dismiss the harassment charge with prejudice and resentence Yasir on the remaining conviction. On remand, Yasir can raise any remaining sentencing issues.

The Majority Opinion and the Dissenting Opinion are very lengthy in addressing the facts and the record and the issues relating to defendant's unsuccessful argument that his trial was prejudicially affected by arguments infected with religious and cultural bias.

Result: Affirms Spokane County Superior Court conviction of Yasir Dirraji for second degree felony murder.

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BRIEF NOTES REGARDING MAY 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 two entries below address the May 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 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. Lorenzo Jose Juarez: On May 15, 2025, Division Three of the COA affirms the Yakima County Superior Court conviction of defendant for rape of a child in the first degree. One of defendant's unsuccessful challenges on appeal related to defendant's assertion that a law enforcement officer improperly "vouched for the victim."

The Juarez Opinion concludes as follows that no vouching occurred:

> Lorenzo Juarez asserts that [the detective's] testimony that forensic interviews can "weed out fabrications or manipulation" implied that [the detective] believed M.H. truthful, as he did not observe any signs of deception during her interview. [The detective] did not explicitly testify that he believed M.H. Rather, he stated that he noted no indications of fabrication or manipulation. When a witness does not expressly declare a belief in the victim's account, the testimony does not constitute manifest constitutional error. State v. Warren, 134 Wn. App. 44, 55, 138 P.3d 1081 (2006).

Here is a link to the Opinion in State v. Lorenzo Juarez:
https://www.courts.wa.gov/opinions/pdf/398081_unp.pdf

2. Personal Restraint Petition of King Carnell Wright f/n/a Tedgy Carnell Wright: On May 19, 2025, Division One of the COA affirms the King County Superior Court convictions of defendant (who was convicted for two successive episodes of predatory criminal conduct against escorts) for (A) rape in the first degree, (B) rape in the second degree, (C) robbery in the first degree, and (D) two counts of unlawful possession of a firearm.

One of defendant's arguments was that the affidavit for a search warrant did not establish probable cause to search his apartment. Defendant argued that (1) the affidavit did not establish credibility of the key informant (the victim), the affidavit did not establish a nexus that would support a search of his apartment. The Wright Opinion rejects those arguments under the following analysis:

> [P]robable cause supports the search warrant. The affidavit supporting the warrant request establishes that N.F. [one of the two rape victims of Wright in the case] had personal knowledge of the facts she relayed to law enforcement, N.F. accurately described Wright's car, accurately identified and led law enforcement to Wright's apartment, and definitively identified Wright out of a photographic montage.
>
> The evidence N.F. provided, corroborated by law enforcement, establishes her knowledge as sufficiently reliable to establish probable cause. N.F.'s descriptions of the crimes committed against her then establish a reasonable inference that Wright was

involved in criminal activity. Given that the alleged criminal activity took place at Wright's apartment, N.F.'s statement similarly raised a reasonable inference that evidence of the crime could be found at the place to be searched. Because probable cause supported the warrant, the court did not abuse its discretion in issuing the search warrant.

The Wright Opinion also rejects, on grounds of lack of standing, defendant's argument that officers exceeded the scope of the warrant when they searched a purse belonging to a woman who is the mother of defendant's children. The purse was located in the defendant's apartment at the time of execution of the search warrant, but defendant was not in actual possession of the purse at any time during the search of his apartment.

Here is a link to the Opinion in State v. Wright:
https://www.courts.wa.gov/opinions/pdf/848607.pdf

LEGAL UPDATE EDITOR'S NOTE ON A NOT-LEGAL POINT OF OBSERVATION: An interesting fact, at least to me in my sheltered existence, is that one of the two escort-victims of defendant's violent predatory conduct had marked the $1,300 in bills that he stole from her.

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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