LEGAL UPDATE FOR WASHINGTON LAW ENFORCEMENT

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

SEPTEMBER 2022

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In Johnson v. City of Grants Pass, ___ F.4th ___ (9th Cir., September 28, 2022), a three-judge Ninth Circuit panel affirms the merits ruling of a U.S. District Court judge that the City of Grants Pass could not, consistent with the Eighth Amendment's prohibition against cruel and unusual punishment, enforce its anticamping ordinances against homeless persons for the mere act of sleeping outside with rudimentary protection from the elements, or for sleeping in their car at night, when there was no other place in the City for them to go.

The Majority Opinion in Johnson declares that Martin applies to civil citations where, as here, the civil and criminal punishments were closely intertwined. The Majority Opinion (about 45 pages long) and the Dissenting Opinion (about 35 pages long) address a number of issues that do not go to the merits of constitutionality. Those issues will not be addressed in this Legal Update entry, and the lengthy discussions in the two Opinions of the Eighth Amendment merits issue also will not be addressed in any detail.

The Dissenting Opinion in Johnson strongly criticizes the reasoning and ruling in the 2018 Martin decision, asserting that that Martin egregiously misconstrued the Eighth Amendment and the Supreme Court's caselaw construing it. The Dissenting Opinion in Johnson also attacks the Johnson Majority Opinion as misreading and greatly expanding the "erroneous" 2018 ruling on the merits in Martin. Finally, as to the merits of the Eighth Amendment issue, the Dissenting Opinion in Johnson asserts that the effect of the Majority Opinion effectively requires the City of Grants Pass to allow all but one of its public parks to be used as homeless encampments.

Result: Affirmance for the most part of the U.S. District Court (Oregon) grant of summary judgment and injunctive relief against the City of Grants Pass (Oregon).

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WASHINGTON STATE COURT OF APPEALS

CONSTRUCTIVE POSSESSION EVIDENCE HELD SUFFICIENT TO SUPPORT POSSESSION ELEMENT OF CONVICTION FOR POSSESSION OF CONTROLLED SUBSTANCES WITH INTENT TO DELIVER; HOWEVER, ON AN UNRELATED ISSUE, I.E., THE PROSECUTOR'S REFERENCES TO A "MEXICAN OUNCE" IN ARGUMENT TO THE JURY, ARE HELD TO REQUIRE RE-TRIAL OF DEFENDANT

In State v. Ibarra-Erives, ___ Wn. App. 2d ___ , 2022 WL ___ (Div. I, September 19, 2022), Division One of the Court of Appeals rules that the record contains sufficient evidence to support the possession element of defendant's conviction in a jury trial for possession of methamphetamine and heroin with intent to deliver. The Court of Appeals provides lengthy analysis, excerpted below, explaining that the theory of construction possession, supports the jury's verdict in relation to the possession element of the crime of possession of a controlled substance with intent to deliver.

[LEGAL UPDATE EDITOR'S NOTE: The Opinion of the Court of Appeals does not address the sufficiency of evidence on the other element of the charge, i.e., intent to deliver, although the defendant's briefing offered some argument on that point. The prosecutor's Brief of Respondent pointed out that a jury could reasonably find intent to deliver from the combination of facts in the record that (1) defendant had $591 on his person when arrested in his home; (2) baggies containing illegal drugs seized during the search and arrest process were of essentially the same weight as each other, consistent with being packaged for sale; (3) there were scales on the premises; and (4) there were plastic bags throughout the premises

I also note that a box of baggies was found near the scale and a backpack containing some bindles of heroin and methamphetamine. One can reasonably speculate that the reason that the Court of Appeals did not address sufficiency of evidence of the intent to deliver is that the Court of Appeals concluded that these facts in combination were sufficient evidence to support the jury's finding that defendant had intent to deliver the illegal drugs of which he was found to be in possession.]

The Court of Appeals overturns the conviction, however, on the grounds that in the trial a deputy prosecutor engaged in "race-based misconduct" in twice repeating in jury argument a detective's reference in testimony to a street term of "Mexican ounce." The Court of Appeals rules that this error at trial tainted the jury verdict, and that the case must be remanded for re-trial. This Legal Update entry will not further discuss the latter issue.

The Court of Appeals describes as follows the facts and proceedings below relating to the sufficiency of evidence issue:

> In June 2018, the Snohomish Regional Drug Task Force executed a search warrant to recover drugs and related evidence in an apartment rented to a man named Javier Romo Meza. Armed officers wearing tactical vests and helmets descended on the apartment. Using a "soft . . . ruse-type knock" and saying she was "management," a detective persuaded Ibarra-Erives to open the door. Officers then "pulled him out onto the front landing" and arrested him.

> Inside the apartment, officers found one locked, unoccupied bedroom they believed belonged to Romo Meza. The locked bedroom contained no contraband. But on the kitchen counter, police found white powder later determined to be methamphetamine.
>
> In a second unlocked bedroom that police labeled as "KK" for evidentiary purposes, they found a man identified as Isaias Leon Reynaga. On the closet shelf in that room, officers discovered a backpack. The backpack contained seven one-ounce "bindles" of methamphetamine and five bindles of heroin that would have sold for close to $8,000 on the street. The backpack did not contain any information identifying its owner. On the shelf next to the backpack, police found a digital scale and a box of plastic sandwich bags.
>
> After questioning Leon Reynaga, police determined he did not have any ties to the apartment other than as a momentary visitor. Ibarra-Erives, on the other hand, admitted that he "temporarily" lived at the apartment. He told police he sometimes slept on the couch and sometimes on the pile of blankets officers observed in bedroom KK where they found the backpack. [Court's footnote: *The room had no bed.*]
>
> Ibarra-Erives said the prescription medication and clothes found on the floor of the bedroom were his. But he denied owning the backpack. When police searched Ibarra-Erives' pockets, they found a broken glass pipe used for smoking methamphetamine that had white residue and burn marks on it. He also had $591 in cash in his wallet.
>
> The State charged Ibarra-Erives with unlawful possession of a controlled substance with intent to manufacture or deliver. At trial, Ibarra-Erives, who is Latinx, used a Spanish interpreter. [**LEGAL UPDATE EDITOR'S NOTE: The author of the Opinion uses "Lantinx" as a gender-neutral or nonbinary alternative to "Latino" or "Latina"**].
>
> . . . . The jury convicted Ibarra-Erives as charged and the court imposed a standard-range sentence of 16 months.

[Some paragraphing revised for readability]

The following is the key legal analysis of the Court of Appeals on the issue of sufficiency of evidence of possession of illegal drugs with intent to deliver:

> Possession can be either actual or constructive. "Actual possession" requires the individual to have physical custody of a given item. "Constructive possession" exists where the individual has "dominion and control" over that item. Control need not be exclusive to the defendant to establish possession. We examine the totality of the circumstances to determine whether an individual has dominion and control over an item. One factor we consider is whether the individual could readily convert the item to his actual possession. We also consider physical proximity as part of our inquiry, though physical proximity alone does not establish constructive possession. . . . . State v. Chouinard, 169 Wn. App. 895, 899 (2012) (mere proximity insufficient to show dominion and control).
>
> Constructive possession may also exist if the individual had dominion and control over the broader premises in which the item was located. State v. Shumaker, 142 Wn. App. 330, 334 (2007). Dominion and control over a premises creates a rebuttable presumption that the person also has dominion and control over items within the

premises. But mere knowledge that an item exists on the premises does not amount to dominion and control. Chouinard, 169 Wn. App. at 899.

Ibarra-Erives cites [State v. George, 146 Wn. App. 906 (2008).] and State v. Callahan, 77 Wn.2d 27 400 (1969), for the proposition that absent ownership, proximity alone does not amount to possession. In George, the court concluded the defendant did not exercise dominion and control over a vehicle as a mere "backseat passenger," whereas the driver actually owned the car.

[Court's footnote 3: *Ibarra-Erives cites two other cases reaching similar conclusions, State v. Cote, 123 Wn. App. 546 (2004), and State v. Enlow, 143 Wn. App. 463 (2008). As in George, the defendants in those cases had no connection to the vehicles containing illegal drugs other than as passengers*.]

Police also could not forensically tie the passenger to the drugs and he showed no signs of consuming them [in George]. In Callahan, police searching a houseboat found defendants Hutchinson and Dolan in the living room, sitting at a desk with "various pills and hypodermic syringes" and a box of drugs on the floor between them. Defendant Callahan was the tenant of the houseboat. Hutchinson claimed he had been a guest on the boat for two to three days. While Hutchinson denied that he owned the drugs, he admitted that he handled them earlier in the day and that he owned the guns and scales consistent with drug use officers found in the houseboat. The court determined Hutchinson did not exercise dominion and control over the houseboat because he did not live there as a tenant or subtenant, had no responsibility for maintaining the premises, and did not keep private items like clothes or toiletries there.

[Court's footnote 4: *State v. Spruell, 57 Wn. App. 383, 388 (1990), also relied on by IbarraErives, reached the same conclusion because the evidence showed the defendant "had no connection with the house or the cocaine" other than as "a mere visitor in the house."*]

The court [in Callahan] also pointed to the admission of a fourth individual that "the drugs belonged to him; that he had brought them onto the boat; that he had not sold them or given them to anyone else; and that he had sole control over them."

Both cases are distinguishable. Unlike George, the State here presented evidence of proximity "coupled with 'other circumstances linking him to the [drugs].'" Not only did Ibarra-Erives admit to living in room KK, he also possessed in his pockets paraphernalia used to smoke methamphetamine and an amount of cash that a detective testified was consistent with drug sales.

And, unlike Callahan, Ibarra-Erives' ties to the apartment exceeded that of an overnight guest. He lived in the unit at the time and slept in the bedroom where police found the backpack. Police also found a pile of his clothes and two bottles of prescription medication nearby that IbarraErives admitted were his.

Considering the evidence in the light most favorable to the State, a rational trier of fact could determine that Ibarra-Erives constructively possessed the backpack and its contents.

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

Result: Reversal of Snohomish County Superior Court conviction of Jesus H. Ibarra-Erives for possession of controlled substances with intent to deliver; case remanded for re-trial.

WHERE MULTIPLE EYEWITNESSES DIED DURING THE 12-YEAR PERIOD BETWEEN (1) THE STATE'S DEVELOPMENT OF PROBABLE CAUSE TO CHARGE THE DEFENDANT AND (2) FILING OF THE CHARGE, DIVISION ONE OF THE COURT OF APPEALS OVERTURNS, WITH PREJUDICE AGAINST RETRIAL, DEFENDANT'S FIRST DEGREE FELONY MURDER CONVICTION; THE RULING IS BASED ON THE TOTALITY OF THE FACTS AND ON A RATIONALE OF CONSTITUTIONAL DUE PROCESS PROTECTION AGAINST UNREASONABLE AND PREJUDICIAL PRE-ACCUSATORIAL DELAY

In State v. Stearns, ___ Wn. App. 2d ___ , 2022 WL ___ (Div. I, September 19, 2022), Division One of the Court of Appeals overturns a first-degree felony murder conviction based on pre-accusatorial delay in charging the defendant, and the Court rules that the State may not prosecute the defendant. The introduction to the Court of Appeals Opinion summarizes the ruling as follows:

> In November 2020, a jury found John Ray Stearns guilty of felony murder in the first degree, with a special allegation of sexual motivation, based on an incident that occurred in 1998. DNA evidence retrieved from the victim and scene connected Stearns to the incident in 2004, and law enforcement interviewed him in 2005.
>
> The prosecuting attorney assigned to the case later acknowledged that sufficient probable cause existed to charge Stearns with the murder after the 2005 interview, but he did not file charges until 2017. Multiple eyewitnesses interviewed by police in 1998 passed away during the delay between the State's development of probable cause and charging, including the half-sister of the victim who was purportedly the last person to see her alive.
>
> However, the trial court denied Stearns's pretrial motion to dismiss based on pre-accusatorial delay. Stearns argues this ruling, along with numerous other errors, deprived him of a fair trial. Because the State's pre-accusatorial filing delay violated Stearns's due process rights, we reverse and dismiss with prejudice.

Result: King County Superior Court conviction of John Ray Stearns reversed; case dismissed prejudice, thus precluding his prosecution for the killing.

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BRIEF NOTES REGARDING SEPTEMBER 2022 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 very 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 three entries below address the September 2022 unpublished Court of Appeals opinions that fit the above-described categories. I do not promise to be able catch them all, but each month I will make a reasonable effort to find and list all decisions with these issues in unpublished opinions from the Court of Appeals. I hope that readers, particularly attorney-readers, will let me know if they spot any cases that I missed in this endeavor, as well as any errors that I may make in my brief descriptions of issues and case results. In the entries that address decisions in criminal cases, the crimes of conviction or prosecution are italicized, and descriptions of the holdings/legal issues are bolded.

1. State v. Jonathan Joshua Oson: On September 12, 2022, Division One of the COA rejects the defendant's challenges to his Clark County Superior Court convictions for *one count of felony murder and one count of unlawful possession of firearm*. Among other rulings, the Court of Appeals rules that (**1) the affidavit for a search warrant for Oson's cell phone establishes probable cause to search the phone, and (2) the search warrant meets the constitutional particularity requirement.**

The Oson panel's Opinion explains as follows the reasoning for rejecting the *probable cause* challenge to the search warrant:

> Oson argues that trial counsel was ineffective for not challenging the constitutionality of the July 27 warrant for the cell company records associated with phone number 360-843-5496 because it lacks probable cause. . . . We disagree.
>
> . . . .
>
> Oson argues that the search warrant issued on July 27 lacks probable cause because it fails to tie Oson's 360-843-5496 phone number to his criminal activity. Oson relies on State v. Phillip, 9 Wn. App. 2d 464, 471 (2019) and State v. Denham, [an unpublished Division One opinion issued on April 27, 2020]
>
> In Phillip, the court determined a sufficient nexus had not been established between the defendant's cell records and the victim's murder because the affidavits did not support a reasonable inference that the defendant was involved in the victim's death. The affidavit contained a crime scene description, information that a neighbor was asked to check on the victim, and information surrounding the victim's girlfriend's relationship with the defendant.
>
> In Denham, the court determined the affidavit lacked a nexus between the crime of burglary and the defendant's cell phone records. There, the court determined the language "'[o]btaining the records from [the defendant's] cellular phone service providers, I believe would assist in providing information on his location during the above listed crimes'" was speculative and indicative of an exploratory search.

> This case is distinguishable. Here, the affidavit contained information that Romano died by homicide from a gunshot wound to the head, that Romano had been communicating with Schell right before his murder and moved the location of their meet up to WinCo, that Flores's vehicle arrived at the WinCo right before the murder, that Flores's vehicle was likely chasing Romano's vehicle, that Pyper told officers Oson was the shooter, and that Schell confirmed he generally communicated with Oson using the 360-843-5496 number.
>
> These facts worked together to establish evidence that Schell acted as a "middle-man, facilitating a meeting between Romano and Flores/Oson." The affidavit contains more than mere speculative facts, and creates a probability that Oson was involved in Romano's murder and that evidence of that murder would be found in the cell records of the 360-843-5496 phone number. . . .

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

The Oson panel's Opinion explains as follows the reasoning for rejecting the *particularity* challenge to the search warrant:

> Oson next argues that the search warrant fails to meet the particularity requirement when it authorized a blanket search of any information in the records including the [cell site location information] data. We disagree.
>
> In State v. Griffith, 129 Wn. App. 482, 488-90 (2005), the court determined that the warrant was overbroad because it listed cameras, unprocessed film, computer processing units and electronic storage media, documents pertaining to internet accounts, and videotapes. The supporting affidavit stated Griffith used a digital camera to take pictures of the victims and he kept the pictures on a computer.
>
> [In Griffith], the affidavit did not identify evidence that Griffith uploaded the pictures to the internet or that he used film or videotapes, thus the warrant was overbroad in permitting a search of items with no connection to the alleged offenses.
>
> Griffith is distinguishable. Here, the warrant is limited to records held by Metro PCS from June 8, 2018, to June 21, 2018. The warrant limits the information sought to the probable cause established by the warrant affidavit: that it was Oson's phone account, Oson had the phone on the night of the murder, and that Oson was communicating with Schell that night. The warrant is limited in scope to the probable cause in the attached affidavit, thus it is sufficiently particular.

[Some citations omitted, others revised for style; footnote omitted]

The Opinion in State v. Oson can be accessed on the Internet at:
https://www.courts.wa.gov/opinions/pdf/834398.pdf

2. State v. Michael Evan Ross-Morales: On September 27, 2022, Division Two of the COA rejects the defendant's challenges to his Clark County Superior Court convictions for (A) *vehicular homicide* and (B) *hit and run (death)*. The Court of Appeals rules that **law enforcement did not violate defendant's constitutional Due Process rights by not retaining his vehicle as exculpatory evidence.**

The Opinion of the Court of Appeals explains the legal standard governing the Due Process issue raised by defendant:

> Whether the State's failure to preserve evidence of an offense constitutes a due process violation that requires dismissal of criminal charges depends on how the evidence is characterized. See State v. Armstrong, 188 Wn.2d 333, 345 (2017). The criminal charges must be dismissed if the State has not preserved "material exculpatory evidence." State v. Wittenbarger, 124 Wn.2d 467, 475 (1994). To constitute "material exculpatory evidence," the evidence at issue must "'possess an exculpatory value that was apparent before it was destroyed and be of such a nature that the defendant would be unable to obtain comparable evidence by other reasonably available means.'" Armstrong, 188 Wn.2d at 345 (quoting Wittenbarger, 124 Wn.2d at 475). This is a "very narrow category." State v.Groth, 163 Wn. App. 548, 557 (2011).
>
> On the other hand, the failure to preserve "potentially useful evidence" does not violate due process unless the defendant can show bad faith by the State. Armstrong, 188 Wn.2d at 345. Evidence is merely potentially useful if "'no more can be said than that it could have been subjected to tests, the results of which might have exonerated the defendant.'" Groth, 163 Wn. App. at 557 (quoting Arizona v. Youngblood, 488 U.S. 51, 58 (1988)).
>
> Whether the State has acted in bad faith depends on the State's knowledge of the evidence's exculpatory value at the time it was lost or destroyed. Armstrong, 188 Wn.2d at 345. The defendant must come forward with specific factual allegations that show an improper motive. [Armstrong] However, "[a]cting in compliance with its established policy regarding the evidence at issue is determinative of the State's good faith." Armstrong.

[Some citations revised for style]

Then, the Opinion in Rose-Morales explains the panel's view that the evidence in this case does not meet the legal standard for the Due Process issue:

> Ross-Morales argues that the car involved in the accident constituted "material exculpatory evidence." He claims that an examination of the car would have shown blood underneath the car where he allegedly cut his hand the day before the accident and could have shown that the seat and the mirrors were not in the proper position for someone of his height.
>
> However, while finding blood under the car and the position of the driver's seat and rearview mirror may have been helpful evidence, it did not have exculpatory value that was apparent before the car was released. The evidence that Ross-Morales hoped to recover from inspecting the vehicle would not have ruled out the fact that he was the driver.
>
> [The potential evidence] was speculative at best and not apparently exculpatory. In addition, there were other reasonable means of obtaining this information because photos of the car were available. Ross-Morales could have had an expert testify to the position of the seat and mirror based on those photos. Therefore, we conclude that the car involved in the accident was not "material exculpatory evidence."

> Instead, the car involved in the accident was merely "potentially useful evidence." The issue then becomes whether Ross-Morales can show that the Washougal Police Department released the car in bad faith. Armstrong, 188 Wn.2d at 345.
>
> Ross-Morales does not present any specific factual allegations that show an improper motive. He only claims without supporting evidence that the police knew of the exculpatory value of the car at the time it was released.
>
> In addition, the car was released in accordance with Washougal Police Department policy, which is determinative of good faith. [Armstrong] Therefore, we conclude that the release of the car involved in the accident was not a due process violation.

[Some paragraphing revised for readability]

The Opinion in State v. Ross-Morales can be accessed on the Internet at:
https://www.courts.wa.gov/opinions/pdf/D2%2055608-1-II%20Unpublished%20Opinion.pdf

3. State v. Joshua John Edwards: On September 27, 2022, Division Three of the COA agrees with the defendant's challenge to his Stevens County Superior Court conviction for *one count of possession of a controlled substance (heroin) with intent to deliver*. Defendant wins reversal and the dismissal of charges with prejudice against re-filing of charges. The Court of Appeals rules under the corpus delicti rule that the State failed to produce independent evidence sufficient to corroborate the defendant's incriminating statement to a law enforcement officer.

The Opinion of the Court of Appeals explains as follows the panel's view that the corpus delicti rule was not satisfied by independent evidence to corroborate the defendant's incriminating statement to a law enforcement officer:

> Individuals sometimes confess to imaginary crimes. State v. Cardenas-Flores, 189 Wn.2d 243, 261 (2017). Corpus delicti is a "corroboration rule that 'prevent[s] defendants from being unjustly convicted based on confessions alone.'" {Cardenas-Flores} (quoting State v. Dow, 168 Wn.2d 243, 249 (2010)).
>
> The corpus delicti, meaning the "body of the crime," "must be proved by evidence sufficient to support the inference that a crime took place, and the defendant's confession alone is not sufficient to establish that a crime took place." [Cardenas-Flores] (quoting State v. Brockob, 159 Wn.2d 311, 327-28 (2006). "Specifically, '[t]he State must present other independent evidence . . . that the crime a defendant described in the [confession] actually occurred.'" [Cardenas-Flores) (quoting Brockob). Because corpus delicti pertains to sufficiency of the evidence, it is an issue that can be raised for the first time on appeal. [Cardenas-Flores]
>
> The independent evidence of corpus delicti "need not be sufficient to support a conviction, but it must provide prima facie corroboration of the crime described in a defendant's incriminating statement." [Brockob] "Prima facie corroboration of a defendant's incriminating statement exists if the independent evidence supports a logical and reasonable inference of the facts sought to be proved." [Brockob] (citing State v. Aten, 130 Wn.2d 640, 656 (1996).

Where the incriminating statement is of an intent to deliver a controlled substance, Washington cases identify three requirements for establishing corpus delicti:

> (1) 'the evidence must independently corroborate, or confirm, a defendant's incriminating statement,' (2) the independent evidence 'must be consistent with guilt and inconsistent with a hypothesis of innocence,' and (3) the evidence must corroborate 'not just a crime but the specific crime with which the defendant has been charged.' [Brockob] quoting Aten, 130 Wn.2d at 660).

State v. Sprague, 16 Wn. App. 2d 213, 226 (2021). The requirement that the evidence be inconsistent with a hypothesis of innocence is unique to the corpus delicti analysis, and in tension with the principle that we draw all reasonable inferences in favor of the State. [Sprague]. In some cases, Sprague being an example, it will result in the independent evidence being insufficient to corroborate a defendant's incriminating statement (because consistent with a hypothesis of innocence) and yet sufficient to support a finding of guilt when viewed in the light most favorable to the State.

In this case, the State presented independent evidence that Mr. Edwards possessed 23 grams of heroin. "Mere possession, without more, does not raise an inference of the intent to deliver," however. State v. Cobelli, 56 Wn. App. 921, 925 (1989). Even possession of a quantity greater than needed for personal use "is not sufficient to support an inference of intent to deliver." State v. O'Connor, 155 Wn. App. 282, 290 (2010). A law enforcement officer's opinion on what quantity of a controlled substance is "normal for personal use" likewise cannot alone support an inference of intent to deliver. State v. Hutchins, 73 Wn. App. 211, 217 (1994).

The State argues on appeal that evidence of the manner in which Mr. Edwards possessed the heroin – cut up and individually wrapped – independently corroborates a theory of intent to deliver. This argument is not supported by the record, however.

[A deputy sheriff] clarified that the heroin was found in ball form, although it was "now divided up into pieces," and "[n]ot individually wrapped." No other evidence associated with drug selling activity (scales, a large amount of cash or cash in small denominations, packaging material, a transaction ledger) was found in the search of Mr. Edwards's trailer. [The deputy] testified that 24 grams of heroin could be consumed by a single individual over a week to 10 days, and [another deputy] agreed that an addict, with tolerance and access to a supply, could use more than what [the second deputy] characterized as normal or typical.

There was insufficient independent evidence of corpus delicti to support the admissibility of Mr. Edwards's statement about selling drugs.

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

The Opinion in State v. Edwards can be accessed on the Internet at:
https://www.courts.wa.gov/opinions/pdf/383024_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 Assistant Attorney General and a Senior Counsel, Mr. Wasberg was either editor (1978 to 2000) or co-editor (2000 to 2011) of the Criminal Justice Training Commission's Law Enforcement Digest. From the time of his retirement from the AGO through the fall of 2014, Mr. Wasberg was a volunteer helper in the production of the LED. That arrangement ended in the late fall of 2014 due to variety of concerns, budget constraints and friendly differences regarding the approach of the LED going forward. Among other things, Mr. Wasberg prefers (1) a more expansive treatment of the core-area (e.g., arrest, search and seizure) law enforcement decisions with more cross references to other sources and past precedents; and (2) a broader scope of coverage in terms of the types of cases that may be of interest to law enforcement in Washington (though public disclosure decisions are unlikely to be addressed in depth in the Legal Update). For these reasons, starting with the January 2015 Legal Update, Mr. Wasberg has been presenting a monthly case law update 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.

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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 [cjtc.wa.gov/resources/law-enforcement-digest].

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