LEGAL UPDATE FOR WASHINGTON LAW ENFORCEMENT

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

APRIL 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: HOT-PURSUIT-FLEEING-FELON EXCEPTION TO FOURTH AMENDMENT SEARCH WARRANT REQUIREMENT IS HELD APPLICABLE IN CASE INVOLVING A FELONY-ELUDER (PER CALIFORNIA TRAFFIC LAW); ENTRY OF HOME HELD JUSTIFIED DESPITE THE FACT THAT THE PURSUING OFFICER LOST SIGHT OF THE FLEEING FELON FOR NINE MINUTES

Newman v. Underhill, ___ F.4th ___, 2025 WL ___ (9th Cir., April 23, 2025)

LEGAL UPDATE EDITOR'S INTRODUCTORY NOTE: The Ninth Circuit Opinion in Newman v. Underhill digested below does not describe the manner in which the fleeing suspect drove in fleeing the pursuing officer. However, the Plaintiff (a roommate of the man who fled into the shared home of the roommates) conceded in the case that the manner of flight by the roommate in this case made this a fleeing felon case under California law. My limited research indicates that flight from a police stop under California law is a felony only if the fleeing person drives recklessly during the flight. That is the same as Washington's felony eluding law.

Also, the Washington appellate courts have not made an independent grounds interpretation of article 1, section 7 of the Washington constitution to restrict warrantless hot pursuit into a residence in pursuit of a felon. Therefore, I think that this case is

applicable for Washington law enforcement officers. Some research sources are provided in a Legal Update Editor's note at the end of this entry.

The Ninth Circuit "Staff Summary" (which is not part of the Ninth Circuit Opinion) summarizes the decision very briefly as follows:

> *Fourth Amendment/Hot Pursuit Exception*
>
> The panel affirmed the district court's summary judgment for San Bernardino County Sheriff's Department deputies in an action brought pursuant to 42 U.S.C. § 1983 alleging Fourth Amendment violations when deputies entered plaintiff's home without a warrant while pursuing a fleeing suspect.
>
> The district court granted summary judgment to defendants, reasoning, in relevant part, that no Fourth Amendment violation occurred because the hot-pursuit exception to the warrant requirement applied.
>
> In affirming the district court, the panel first held that, as a matter of law, [defendant officers] had probable cause for the entry. Under the circumstances, a reasonable person in Deputy Underhill's shoes would have believed that there was at least a fair probability that the suspect was in Plaintiff's home.
>
> The panel next held that Underhill's pursuit of the suspect constituted an exigent situation justifying the entry because the officers were in immediate and continuous pursuit of a suspect from the scene of the crime at the moment they made entry. Underhill gave chase immediately after seeing the suspect fail to yield to a traffic stop, a felony, and fleeing in his truck after being instructed to stop.
>
> Notwithstanding the nine-minute delay between Underhill losing sight of the suspect and Underhill entering plaintiff's home, the continuity of the chase remained intact.

[Some paragraphing revised for readability]

Below are some excerpts from the Opinion in Newman v. Underhill

Facts and lower court proceedings:

> In the early hours of July 27, 2022, Sheriff's Deputy Todd Underhill attempted to pull over a black Chevy Silverado that had an expired registration and an unilluminated license plate. The Silverado's driver—later identified as Richard Delacruz—fled, and Underhill immediately pursued. Eventually, Delacruz got out of his truck on a dead-end street and ran away on foot. Underhill followed, also on foot, stopping briefly to "clear" the Silverado before continuing the pursuit.
>
> Having lost sight of Delacruz, Underhill reported to dispatch that Delacruz had been "[l]ast seen toward the residence at 4083 Camellia Drive"—Plaintiff Michael Newman's home. The house sits on a hill, with "drop offs" between it and adjacent properties and with fencing—which, in some places, is only waist high—around the perimeter of the backyard.

Underhill ran toward Plaintiff's backyard and, not seeing Delacruz, decided to wait for backup before continuing the pursuit. Deputy Jonathan Barmer arrived roughly two minutes later. According to the transcript of the audio from Underhill's belt recorder, Underhill told Barmer that Delacruz had gone "somewhere over to the rear of the residence.

Underhill also stated that he "th[ought]," but did not "know," that Delacruz "may" have entered Plaintiff's home.

Underhill and Barmer searched the backyard for Delacruz with their flashlights, while deputies in a Sheriff's Department helicopter looked for heat signatures from overhead. The deputies neither saw any sign of Delacruz nor heard any noises—such as the rattling of a fence—to suggest that he had left the backyard. For their part, the deputies in the helicopter detected heat coming from Plaintiff's home but could not confirm who or what was emitting it.

During or shortly after inspecting the backyard, Underhill noticed something about Plaintiff's backdoor. Underhill's belt-recorder first captured him saying: "Yeah[,] because he came and locked that door, dude." It is not clear from the record what Underhill meant by that statement. Underhill was also recorded stating: "We got an unlocked rear door." Underhill later testified at his deposition that the backdoor had been "slightly ajar[]."

About seven minutes after Delacruz fled his truck on foot, Underhill began announcing the Sheriff's Department's presence and ordering any occupants of the home to exit. Underhill continued to make those announcements for another two minutes. During that period, Underhill heard at least one voice coming from inside the house, and Deputy Lauren Laidlaw arrived at the scene.

Roughly nine minutes after last seeing Delacruz, Underhill—accompanied by Laidlaw and Barmer—entered Plaintiff's home through the backdoor. Hearing Plaintiff's voice coming from elsewhere in the house, Underhill found Plaintiff's room and discovered that Plaintiff is "a quadriplegic in a wheelchair." During their ensuing conversation, which grew contentious at times, Plaintiff told Underhill that his roommate drove a black Chevy Silverado.

About eight minutes after Underhill entered the house, Sergeant James Blankenship joined Underhill and Plaintiff. After another four minutes of conversation, Plaintiff gave the officers consent to look for his roommate in a different part of the house. The officers quickly found and arrested Delacruz, who was later convicted of a felony—evading a peace officer with wanton disregard for safety, in violation of California Vehicle Code section 2800.2(a).

Plaintiff sued Defendants Underhill, Laidlaw, and Blankenship, asserting a claim under 42 U.S.C. § 1983 for unreasonable search in violation of the Fourth Amendment. The operative complaint also lists two state-law causes of action. The district court entered summary judgment in favor of Defendants on all claims. Plaintiff timely appeals.

[Footnotes omitted; some paragraphing revised]

The legal analysis by the Ninth Circuit panel in Newman v. Underhill includes the following:

[T]here are a few narrow exceptions to the warrant requirement. As relevant here, "the exigencies of [a] situation" sometimes "make the needs of law enforcement so compelling that [a] warrantless search is objectively reasonable." . . . Situations involving "the hot pursuit of a fleeing suspect" can fit that description. . . . Underlying the so-called hot-pursuit exception is the principle that "a suspect may not defeat an arrest which has been set in motion in a public place . . . by the expedient of escaping to a private place." United States v. Santana, 427 U.S. 38, 43 (1976).

To rely on the hot-pursuit exception, Defendants must establish that (A) they had probable cause to search Plaintiff's home and (B) "exigent circumstances"—here, the pursuit of a fleeing suspect—"justified the warrantless intrusion." United States v. Johnson, 256 F.3d 895, 905 (9th Cir. 2001) (en banc) (per curiam). On this record, we hold that Defendants [the government parties] have satisfied both requirements as a matter of law.

A. Probable Cause

To establish probable cause in this case, Defendants must show that, when Underhill entered Plaintiff's home, "the 'facts and circumstances' before [him were] sufficient to warrant a person of reasonable caution to believe" that Delacruz would be found therein. . . . As that description suggests, and despite Plaintiff's contention to the contrary, "probable cause means 'fair probability,' not certainty or even a preponderance of the evidence." . . . "Whether there is a fair probability . . . is a 'commonsense, practical question'" that "depends upon the totality of the circumstances, including reasonable inferences." . . ..

B. Hot Pursuit

. . .

In our circuit, a "hot pursuit" excuses a warrantless intrusion into the home only if the "officers [were] in 'immediate' and 'continuous' pursuit of a suspect from the scene of the crime" at the moment they made entry. . . . Other relevant considerations include "the gravity of the underlying offense for which the arrest is being made," . . .and whether "the officers encroached on the property of a person who did not create the exigent circumstances and was completely unrelated to the suspect and his [crimes]" . . . .

In this case, we need deal only with the exception's "immediacy" and "continuity" requirements. Respecting the gravity of the offense, Plaintiff does not dispute that Underhill observed Delacruz committing a felony. Although the Supreme Court has not decided whether all felonies give the police license to chase someone into their home without a warrant . . . we need not resolve that question because Plaintiff does not argue that Delacruz's crime fails to qualify for the "hot pursuit" exception. And no party discusses the effect of Plaintiff's relationship to Delacruz, a factor that, in general, "[v]ery few cases have considered." . . . .

1. Immediacy

We need not dwell long on the question of immediacy. It is undisputed that Underhill gave chase "immediately" after seeing Delacruz fail to yield to a traffic stop—thereby

committing a felony—and flee in his truck. Plaintiff suggests that, in this context, "immediate" means that the warrantless search must "follow immediately, in a temporal sense, from the underlying pursuit." But that interpretation would render the word "continuous"—which, on its own, denotes that a pursuit stops being "hot" once it ends—meaningless. More to the point, [United States v. Johnson, 256 F.3d 895, 905 (9th Cir. 2001)] made clear that an officer satisfies the requirement of immediacy if the officer gives chase as soon as the suspect flees from the scene of the crime. . . .

2. Continuity

Plaintiff argues that, because nine minutes elapsed between Underhill's losing sight of Delacruz and Underhill's entering Plaintiff's home, a genuine dispute of material fact exists regarding the continuity of the pursuit. We disagree.

[United States v. Johnson, 256 F.3d 895, 905 (9th Cir. 2001)] contains our most thorough exploration of the continuity requirement. There, the suspect fled into the woods, and the officer—concerned for his safety—decided not to follow until backup arrived.. . . While waiting for his colleagues, the officer returned to the scene of his initial confrontation with the suspect. . . . Thirty minutes passed, during which time the suspect "was free to run," and during which time the police neither saw the suspect nor "received [any] new information about where [he] had gone." . . . Addressing the hot-pursuit exception, we made clear that, in certain circumstances, the decision to wait for backup "delay[s], but [does] not br[eak]," the "'continuity' of the chase." . . . . We explained, however, that because the officers in Johnson had no clue where the suspect was for more than 30 minutes, the chase's continuity had been "clearly broken."

We discern two interrelated considerations underlying the distinction that [United States v. Johnson, 256 F.3d 895, 905 (9th Cir. 2001)] drew between "delayed continuity" and "broken continuity." First, we focused on whether, and to what degree, the officers lost track of the suspect's whereabouts.

On one end of the spectrum, the continuity of the chase is more likely to survive when "police officers always kn[o]w exactly where the suspect [is]." . . . . On the other end sit cases like Johnson, in which the officers "no longer had any idea where [the suspect] was" by the time they resumed their search. . . .

Second, we examined whether the officers, after losing sight of the suspect, continued to act with speed in attempting to apprehend the suspect. In [United States v. Johnson, 256 F.3d 895, 905 (9th Cir. 2001)], the government's "continuity" showing was undermined by the fact that the officer did not "monitor [the suspect's] movements while waiting for his backup to arrive," but instead went to retrieve an item that he had dropped earlier. . .

Relevant to both considerations is the question of timing. The more time passes without the officer's physically chasing after the suspect—whether because the officer loses track of the suspect or because the officer stops attempting to apprehend the suspect—the more likely the continuity of the chase is to break. [United States v. Johnson, 256 F.3d 895, 905 (9th Cir. 2001)] (stressing that the suspect was left "free to run for over a half hour").

Applying those principles to the undisputed facts in the record, we conclude that, when Underhill entered Plaintiff's home, the continuity of the chase remained intact.

Regarding the first consideration identified above, the nine-minute "pause" identified by Plaintiff is far shorter than the 30-minute period at issue in Johnson. The undisputed evidence supporting the existence of probable cause also demonstrates that, during those nine minutes, Underhill had a reasonably good idea where Delacruz was hiding.

Johnson's second variable points in the same direction. Far from leaving the trail to await backup, Underhill spent most, if not all, of the nine minutes in question actively working to find and apprehend Delacruz. He searched the backyard, announced the Sheriff's Department's presence, and coordinated with fellow officers—including those keeping watch from a helicopter. Conversely, Plaintiff points to no evidence that would allow us to infer that Defendants ceased their pursuit of Delacruz after Underhill lost sight of him.

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

LEGAL UPDATE EDITOR'S RESEARCH-GUIDANCE NOTES: For some discussion of Washington and federal case law relating to the fresh pursuit exception to the federal and state constitutional warrant requirements (and some related matters), see the following two items on the "Law Enforcement Digest" internet page of the Criminal Justice Training Commission (here is a link to the CJTC LED page at https://www.cjtc.wa.gov/resources/law-enforcement-digests)

1. **See pages 185-189 of Pam Longinsky's 2015 outline (still essentially current regarding the issues relevant to "hot pursuit" and other matters addressed at pages 185-189) 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 30-33 of John Wasberg's Law Enforcement Legal Update Outline: This article is updated at least once each year. It was last updated July 1, 2024.**

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WASHINGTON STATE SUPREME COURT

ACCOMPLICE LIABILITY EVIDENCE HELD SUFFICIENT TO SUPPORT CONVICTION FOR SECOND DEGREE FELONY MURDER, PREDICATED ON SECOND DEGREE ASSAULT, WHERE THE STATE PROVED THAT THE DEFENDANT ACTED WITH KNOWLEDGE THAT HE WAS AIDING IN THE COMMISSION OF THE OFFENSE; THE CIRCUMSTANTIAL EVIDENCE IS SUFFICIENT TO ALLOW A RATIONAL TRIER OF FACT TO CONCLUDE THAT DEFENDANT WAS EITHER A PRINCIPAL OR AN ACCOMPLICE IN THE COMMISSION OF THE CHARGED CRIME

State v. Zghair, ___ Wn.2d ___ , 2025 WL ___ (April 17, 2025)

[LEGAL UPDATE EDITOR'S NOTE: The *Weekly Update for the Week of April 14, 2025,* on the WAPA CASE LAW internet site (https://waprosecutors.org/caselaw/), notes the following about the analysis in this case regarding accomplice liability: "The State need not prove knowledge of a plan to commit the crime to prove accomplice

liability. Washington's accomplice liability law allows the state to prove an accomplice either aided or agreed to aid another in the planning or in the commission of the charged crime."]

In State v. Zghair, the Washington Supreme Court rules 7-2 that the complex combination of circumstantial evidence in the case supports a a jury verdict of guilty of the crime of felony murder in the second degree while committing assault in the second degree (including a firearm enhancement). Important to the resolution of this appeal is that, in review of a jury verdict of guilt, the appellate courts must view the evidence in the best light for the State.

The Majority Opinion in Zghair provides a detailed description of the facts and circumstantial evidence. Those details will not be provided in this Legal Update entry. The Opinion also briefly summarizes and lists in the following lengthy paragraph the circumstantial evidence that supports the jury verdict against defendant:

> Taken in the light most favorable to the State, the evidence shows that (1) a combination of cell site location data, traffic camera footage, and video surveillance footage placed Zghair and Ruiz-Perez together throughout the night of Ruiz-Perez's fatal shooting, (2) Zghair drove Ruiz-Perez around in his car on the night of the shooting, (3) Zghair drove Ruiz-Perez to an unattended field where Ruiz-Perez was fatally shot and left to die, (4) Zghair drove away from the scene soon after Ruiz-Perez was shot, (5) Ruiz-Perez was killed with a shotgun, (6) the medical examiner report shows that Ruiz-Perez was shot while standing next to or while inside Zghair's car, (7) forensic evidence shows that Ruiz-Perez's blood and traces of bird shot from a shotgun were found in the back seat cushion of Zghair's car, (8) the pellets found in Ruiz-Perez's wound indicate he was shot with a shotgun, (9) testimony from nearby witnesses indicated there were the sounds of gunshots and a verbal argument coming from the unattended field, (10) Zghair admitted to owning the car used to transport Ruiz-Perez around on the night of his death and having knowledge of his fatal shooting, and (11) before told by police, Zghair admitted to knowing a gun was used in the commission of a murder and knowledge that the victim's perceived ethnicity was someone of Mexican origin.

Some of the principles of law that the Majority Opinion asserts were used to guide the analysis of the *accomplice liability* issue in the case are as follows:

> Washington's complicity statute requires the State to prove the putative accomplice had actual knowledge that his or her conduct would promote or facilitate the crime for which he or she is eventually charged. RCW 9A.08.020(3). Under Washington's complicity statute, a person is guilty as an accomplice of another person in the commission of the crime if, with knowledge that it will promote or facilitate the crime he or she "(i) [s]olicits, commands, encourages, or requests such other person to commit [the crime]; or (ii) [a]ids or agrees to aid such other person in planning or committing [the crime]."
>
> . . . .
>
> To convict Zghair on a theory of accomplice liability for second degree felony murder, predicated on second degree assault, the State must prove the crime was committed and the accused acted with knowledge that he was aiding in the commission of the offense. RCW 9A.08.020(3)(a)(ii). . . .
>
> . . . .

> Knowledge of a plan to commit the charged crime is not a required element to establish accomplice liability. Washington's complicity statute provides the State with multiple ways to establish liability under RCW 9A.08.020(3)(a)(ii), as is clear from the use of the disjunctive "or" twice in subsection (3)(a)(ii) of the statute. The State must prove the putative accomplice either aided or agreed to aid another in the planning or in the commission of the charged crime. RCW 9A.08.020(3)(a)(ii).
>
> Alternatively, if the State had chosen to establish accomplice liability under subsection (3)(a)(i), it would have needed to present evidence that Zghair solicited, commanded, encouraged, or requested another person to commit the charged crime. RCW 9A.08.020. Under subsection (3)(a)(i), the State is similarly not required to present evidence that Zghair had knowledge of a "plan" to commit the charged crime.
>
> Thus, evidence of a plan to commit the charged crime is not a requirement of accomplice liability, it is simply one way the State may establish liability. The State was permitted to establish accomplice liability by proving that Zghair aided another in committing the charged crime. The jury instructions accurately reflect the above legal standard.

[Some paragraphing revised for readability]

The Dissenting Opinion is authored by Justice Montoya-Lewis and joined by Justice Gordon McLeod. The final two paragraphs of the dissent summarize as follows their view that the evidence was insufficient to support the jury's verdict:

> I would conclude the evidence was insufficient to convict Zghair as an accomplice. While the evidence supports inferences that Zghair knew the gun was in the car, was present during the shooting, drove the car away from the shooting, and knew afterward that a crime had been committed, it does not support reasonable inferences that he knew the individual in red would intentionally assault Ruiz-Perez with a deadly weapon or that he knowingly assisted in the commission of that specific crime. Instead, a reasonable trier of fact could reach that conclusion based only on speculation, so the evidence was not sufficient to prove every element of the crime beyond a reasonable doubt.
>
> In this case, no evidence would permit a reasonable inference that Zghair (a) intentionally committed the shooting himself or (b) aided the unidentified third person in planning or committing an intentional assault with the knowledge his assistance would facilitate that specific crime. I would therefore hold the evidence was not sufficient to convict Zghair as either a principal or an accomplice. Holding to the contrary, the majority today effectively forecloses the possibility of any successful challenge to the sufficiency of the evidence, holding that a trier of fact may infer intent to assault, knowledge another would commit assault, and aiding the commission of an intentional assault when no circumstantial evidence makes those inferences reasonable.

[Subheading omitted]

Result: Reversal of Court of Appeals decision that was decided by unpublished Opinion. The end result is that the Supreme Court has reinstated the King County Superior Court conviction of Abbas Salah Zghair for the crime of felony murder in the second degree while committing assault in the second degree with a firearm enhancement.

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WASHINGTON STATE COURT OF APPEALS

FEDERAL SECOND AMENDMENT AND WASHINGTON CONSTITUTIONAL PROTECTION OF FIREARMS RIGHTS: STATE PREVAILS AND DEFENDANT LOSES HIS ARGUMENTS THAT HIS PRIOR CONVICTIONS FOR FELONIES OF FORGERY, POSSESSION OF STOLEN PROPERTY, AND IDENTITY THEFT DO NOT – IN LIGHT OF CONSTITUTIONAL PROTECTIONS – SUPPORT PROSECUTING HIM FOR UNLAWFUL POSSESSION OF A FIREARM

In State v. Koch, ___ Wn. App. 2d ___ , 2025 WL ___ (Div. II, April 22, 2025), Division Two of the Court of Appeals rules in the published part of the Court's Opinion that the defendant is incorrect in his challenges under the U.S. constitution's Second Amendment and under the Washington State constitutional protection of firearms rights (see article I, section 24 of the Washington constitution). The Koch Court rules that neither the Federal nor the State constitutional protection of firearms rights precludes RCW 9.41.040's bar to firearms possession for any past conviction for any felony, including Koch's past convictions for the non-violent felonies of forgery, possession of stolen property, and identity theft.

Defendant in Koch argued that his Second Amendment argument is supported by the history-based analysis in two relatively recent U.S. Supreme Court decisions: (1) New York State Rifle & Pistol Association v. Bruen, 142 S.Ct. 1211 (June 23, 2022) (holding that a history-based interpretation of the Second Amendment precludes application of New York's "have and carry" licensing statute that requires a showing of "proper cause" by any person who wishes to possess a handgun outside of the home); and (2) U.S. v. Rahimi, 144 S.Ct. 1889 (June 21, 2024) (holding that a Federal statute that bars a person subject to a domestic violence restraining order with danger-related wording does not violate the person's constitutional gun rights.)

The Koch Court notes that the U.S. Supreme Court has not yet addressed a Second Amendment challenge to a statute that, like Washington's RCW 9.41.040, imposes a bar to firearms possession for any felony conviction. But the Koch Court also notes that four recent published Washington Court of Appeals Opinions have rejected such challenges: 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).

In the portion of the Koch Opinion that discusses Koch's argument under the Washington constitution, the Court notes that under Washington statutes there is the possibility of restoration of firearms rights for some types of felony convictions:

> In addition, Koch is not permanently prohibited [under the Washington statute] from possessing a firearm. A person convicted under RCW 9.41.040 based on a felony offense other than a felony sex offense, a class A felony, or a felony offense with a maximum sentence of at least 20 years may have their firearm rights restored after five years if certain requirements are satisfied. RCW 9.41.041(1)(2). Once the requirements are satisfied, a trial court must grant a petition for the restoration of firearm rights. See Kincer v. State, 26 Wn. App. 2d 143, 148, 527 P.3d 837 (2023) (applying prior firearm restoration statute).

Result: In the published part of the Court's Opinion, the Court of Appeals affirms the Pierce County Superior Court conviction of Christopher Richard Koch for second degree unlawful possession of a firearm.

In the unpublished part of the Court's Opinion, the Court of Appeals addresses issues not addressed in this Legal Update entry. The Court affirms Koch's convictions for unlawful possession of fentanyl with intent to deliver and unlawful manufacture of fentanyl. However, in a ruling on a jury instruction issue not addressed here, the Court Appeals reverses (and remands for possible re-trial in Superior Court) Koch's conviction for unlawful manufacture of a counterfeit controlled substance trademark or imprint.

EVIDENCE IN THREE-FATALITIES VEHICULAR HOMICIDE CASE IS HELD SUFFICIENT TO SUPPORT TRIAL COURT'S DETERMINATION THAT TOW TRUCK DRIVER AND OCCUPANTS OF A DISABLED CAR WHO WERE STRUCK BY DEFENDANT'S CAR WERE "PARTICULARLY VULNERABLE VICTIMS"

In State v. Ireland, ___ Wn. App. 2d ___ , 2025 WL ___ (Div. II, April 29, 2025), Division Two of the Court of Appeals rejects the appeal of defendant from her convictions and exceptional sentences for three counts of vehicular homicide and one count of vehicular assault.

The introduction to the case briefly summarizes the facts and legal rulings as follows:

> Travis Stoker and his parents, Richard and Karen Stoker, were seat-belted in Richard and Karen's vehicle parked on the shoulder of northbound Interstate 5 (I-5). They were waiting for tow truck driver Arthur Anderson to finish strapping Travis's disabled vehicle onto the truck bed when Ireland collided with them.
>
> Anderson, Richard, and Karen died at the scene, and Travis suffered serious injuries. The evidence admitted at the bench trial included the testimony of a paramedic who opined that Ireland's presentation right after the collision was consistent with impairment. A drug recognition expert (DRE) also testified.
>
> The trial court found Ireland guilty of multiple counts of vehicular homicide and vehicular assault. The trial court also found that Anderson [the tow truck driver] was not protected by a vehicle and both Anderson as well as the three Stokers had no ability to detect the danger that was approaching or avoid the collision.
>
> The trial court then concluded that both Anderson and the three Stokers were all particularly vulnerable victims. Finding aggravating factors beyond a reasonable doubt, the trial court imposed exceptional sentences.
>
> Ireland argues that insufficient evidence supported the trial court's finding that Anderson was not protected by a vehicle and, relatedly, its finding that the aggravating factor of particular vulnerability was present for Anderson and the three Stokers. Ireland also argues that the trial court erred by admitting certain opinion testimony.
>
> We hold that substantial evidence supported the trial court's findings of fact that Anderson was not protected by a vehicle and that he, as well as the three Stokers, were particularly vulnerable victims.

> In the unpublished portion of this opinion, we reject Ireland's remaining claims that the trial court erred in admitting certain opinion testimony. Accordingly, we affirm.
>
> **[LEGAL UPDATE EDITOR'S NOTE REGARDING THE "OPINION TESTIMONY" ISSUE ADDRESSED IN THE UNPUBLISHED PART OF THE OPINION: The Legal Update will not address the Court's "Opinion Testimony" analysis that addresses testimony of government witnesses in relation to impairment of the defendant. The unpublished portion of the Opinion offers some reasons why the challenged testimony could be held to be permissible opinion testimony. However, ultimately the unpublished part of the Opinion does not expressly rule the testimony admissible and instead declares in harmless error analysis that, even assuming that the purportedly impermissible Opinion testimony should not have been allowed, the other evidence in the case was sufficient to support the jury's verdict.]**

[Footnote omitted; some paragraphing revised for readability]

The Ireland Court concludes that sufficient evidence support the trial court's findings (1) that the tow truck driver was not protected by another vehicle, and (2) that all victims were vulnerable victims. The facts-focused legal analysis in the Ireland decision regarding the above issues includes the following:

> In finding of fact (FF) 20, the trial court found beyond a reasonable doubt that Anderson was a vulnerable victim because he "did not have the protection of a vehicle surrounding him" despite "ha[ving] every safety feature that was available to him in place when [the collision] occurred, and unfortunately, that still was not sufficient." The court additionally found that the other victims were vulnerable because "[t]hey were inside of a vehicle, had the small layer of a safety net, as far as whatever the vehicle could provide, as far as protection from the impact from behind, between 78 and 88 miles an hour" and "had no ability to detect the danger that was approaching or avoid the collision."
>
> . . . .
>
> Under the Sentencing Reform Act of 1981, chapter 9.94A RCW, a trial court may impose a sentence above the standard sentencing range if the court finds that the defendant "knew or should have known that the victim[s] [were] particularly vulnerable." RCW 9.94A.535(3)(b). To impose an exceptional sentence based on finding that a victim was particularly vulnerable, the trial court must find beyond a reasonable doubt "'(1) that the defendant knew or should have known (2) of the victim's particular vulnerability and (3) that vulnerability must have been a substantial factor in the commission of the crime.'"
>
> . . . .
>
> It is undisputed that, at the time Ireland's car collided with the Stoker parents' vehicle, Anderson was outside of any vehicle, on the shoulder of I-5, with his tow truck in front of him and the Stokers' vehicle directly behind him. . . . Anderson was a pedestrian between two vehicles and alongside a roadway where cars were traveling at least 70 miles per hour. When Ireland's vehicle collided with the Stokers' vehicle, the force caused Anderson to be pinned between his tow truck and the Stokers' vehicle.

Contrary to Ireland's claim that the vehicles should have provided added safety by "cocooning" Anderson, the two vehicles instead "crush[ed] [] Anderson" as a direct result of Ireland colliding with the Stokers's vehicle, causing his death. We hold that a fair-minded person could have concluded that Anderson was not protected by either his tow truck nor the Stoker's vehicle.

. . . .

As discussed above, the trial court found that Anderson was without the protection of any vehicle when the incident occurred—a finding supported by substantial evidence. Therefore, like the victims in [the above-discussed decisions in [State v. Nordby, 106 Wn. 2d 514 (1986); State v. Thomas, 57 Wn. App. 403 (1990), overruled on other grounds by State v. Parker, 132 Wn.2d 182, 190, 937 P.2d 575 (1997); and State v. Cardenas, 129 Wn.2d 1 (1996)], at the time of the collision, Anderson was a pedestrian who was completely defenseless and vulnerable, especially given that he was next to a roadway where vehicles were traveling at high speeds with only either fair or poor visibility.

Given these circumstances and the applicable case law, a fair-minded person could have found that Anderson was a particularly vulnerable victim. We hold that substantial evidence supported the trial court's finding that Anderson was a particularly vulnerable victim.

Furthermore, at the time of the collision, the three Stokers were in a parked vehicle facing away from oncoming traffic on I-5. Because the Stokers were not moving at the time of impact, they experienced an impact of a vehicle traveling between 77 and 88 miles per hour when Ireland collided with their stopped vehicle, which was behind a tow truck with activated overhead lights and loading Travis's vehicle. Richard and Karen both died at the scene, and Travis sustained substantial bodily injury from the collision including multiple fractures and internal injuries despite all three wearing their seatbelts.

Upon considering the facts in the light most favorable to the State, a fair-minded individual could have concluded that, while the Stokers were afforded some protection from injury through being seat-belted within a vehicle at the time of the collision, their position parked alongside the interstate, behind a tow truck with activated overhead lights and loading Travis's vehicle, made them particularly vulnerable as compared to other vehicles on the roadway. Such a person could also have found that Ireland knew or should have known the vehicles were stopped on the shoulder and the Stokers were particularly vulnerable.

Like the bicyclists in [State v. Morris, 87 Wn. App. 654 (1997)], the Stokers had limited opportunities to evade a collision with a significantly faster moving object from behind. Although the Stokers had their seatbelts on, they were stopped, facing away from oncoming traffic, and behind Travis's disabled vehicle being loaded up into the tow truck with its overhead lights activated. Their vehicle was parked on a shoulder marked with a rumble strip, alongside a freeway where other vehicles were moving at high speeds despite the weather and limited visibility.

In their position, the Stokers's [sic] had little to no opportunity to avoid Ireland's collision from the rear. A rational person could have found that, unlike a moving vehicle on I-5,

the Stokers's position made them "relatively defenseless" in this collision. [State v. Suleiman, 158 Wn.2d 280 (2006)]

Thus, a fair-minded individual could have found that the Stoker's were particularly 15 vulnerable. We hold that, because of the circumstances of the collision, substantial evidence supported the trial court's conclusion that all three Stokers were also vulnerable victims in the collision.

[Case citations and citations to the record omitted; some paragraphing revised for readability]

Result: Affirmance of Cowlitz County Superior Court convictions and exceptional sentences of Anna-Christie Ireland for three counts of vehicular homicide and one count of vehicular assault.

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BRIEF NOTES REGARDING APRIL 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 five entries below address the April 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. Nathan Allen Peterson: On April 8, 2025, Division Two of the COA affirms the Clallam County Superior Court convictions of defendant for (A) one count of second degree unlawful possession of a firearm, and (B) four counts of possession of a controlled substance with intent to deliver while armed with a firearm. One of defendant's unsuccessful challenges on appeal was his Second Amendment challenge that is based on New York State Rifle & Pistol Ass'n v. Bruen, 597 U.S. 1 (2022). His argument mirrors that of other Washington defendants in recent years, asserting that the State cannot show as to his underlying felony conviction "that a restriction on the right to bear arms is consistent with this nation's historical tradition of firearm regulation." The Peterson Court disagrees with defendant, relying on recent Washington appellate Court of Appeals decisions rejecting similar arguments in State v. Ross, 28 Wn. App.

2d 644 (2023), review denied, 2 Wn.3d 1026 (2024); and in State v. Bonaparte, 32 Wn. App. 2d 266 (2024).

Note also the entry above at pages 10-11 of this month's Legal Update regarding the Division Two Court of Appeals decision making the same ruling on the Second Amendment issue in State v. Koch, ___ Wn. App. 2d ___ , 2025 WL ___ (Div. II, April 22, 2025).

Here is a link to the Opinion in State v. Peterson:
https://www.courts.wa.gov/opinions/pdf/D2%2058401-8-II%20Unpublished%20Opinion.pdf

2. State v. Caleb Dane Bell: On April 22, 2025, Division One of the COA affirms the King County Superior Court convictions of defendant for (A) residential burglary and (B) theft. The Court of Appeals rejects the defendant's argument that the trial court violated the Fourth Amendment of the United States Constitution and article I, section 7 of the Washington State Constitution by admitting evidence gained from what defendant argues was an unconstitutional arrest lacking probable cause justification.

The Bell Opinion describes as follows the facts relating to the probable cause issue:

> On November 30, 2021, [a Seattle PD officer] was dispatched to a residence in Northeast Seattle in response to a report of a residential burglary. [The officer] spoke with a contractor working at the residence who reported that his tools and a friend's car key were missing from the home along with his friend's car, a 2015 Audi A6, that had been parked outside the property. [The officer] thus reported a missing 2015 black Audi A6 with a California license plate.
>
> On December 4, 2021, [two other officers] were at lunch when they observed an individual, later identified as Bell, seated in the driver's seat of a black Audi A6 with California license plates. [Those officers] observed Bell getting in and out of the vehicle with various items. [The officers] ran the license plate number and learned the vehicle was reported stolen.
>
> [The officers] followed Bell into a nearby pawn shop to make contact. They placed their hands onto Bell's shoulder and mentioned wanting to talk to him about the car outside. Bell responded that the officers had not seen him in any cars. [One of the officers] placed Bell in handcuffs.
>
> Once at the patrol car, [one of the officers] searched Bell incident to his arrest.

The Bell Opinion describes as follows one of the elements of testimony in the subsequent suppression hearing:

> [The officer who responded to the November 30, 2021 report of a car theft] testified that he investigates a vehicle theft report almost on a daily basis. [That officer] explained that after a 911 report, he interviews the reporting party and then identifies the missing vehicle's type, year, model, and vehicle identification number. He also testified how the reports are created and how he ensures they are credible.

The Bell Opinion's probable cause analysis includes the following discussion:

> Bell argues that it was insufficient for officers to rely on the stolen vehicle report to support probable cause for his arrest. Bell relies on State v. Gonzalez, 46 Wn. App. 388, 731 P.2d 1101 (1986). In that case, an officer was patrolling an area that had been subject to several recent burglaries. . . . The officer observed an unfamiliar vehicle and pulled the vehicle over after noting the registration was expired. . . . The passenger in the vehicle exited the car and kicked an unopened package addressed to someone other than the passengers onto the road. . . .
>
> At this point, both the driver and the passenger were arrested. . . . There was no confirmation that the package was stolen or linked to a burglarized home until after the defendant was arrested and transported to the police station. . . . On appeal, the court [in Gonzalez] concluded that the arrest was illegal because the officers did not have probable cause until after the arrest. . . .
>
> Bell also relies on State v. Sandholm, 96 Wn. App. 846 (1999). There, officers arrested the defendant after observing him driving a vehicle that was listed as stolen in a police database. . . . At the suppression hearing, the State presented no evidence of the source of the stolen vehicle report, or the procedures for creating those reports. . . . On appeal, this court concluded that the State failed to establish the reliability of the stolen vehicle report. Because there was other evidence to establish probable cause, however, the arrest was affirmed. . . .
>
> Both cases are distinguishable. Unlike Gonzalez, the fact[s] that the vehicle was stolen and that Bell was inside the vehicle were known to officers before the arrest. In Gonzalez, police relied on suspicious circumstances but were unaware the property had been stolen until after the arrest. This was not the case here. Officers saw Bell in the vehicle with various items, ran the license plate number, determined that the vehicle was stolen, and then arrested Bell.
>
> And unlike Sandholm, the State presented sufficient testimony as to the reliability of the stolen vehicle report. [The officer who responded to the November 30, 2021 report of a car theft] testified that he investigates a vehicle theft report almost on a daily basis. [That officer] explained that after a 911 report, he interviews the reporting party and then identifies the missing vehicle's type, year, model, and vehicle identification number. He also testified how the reports are created and how he ensures they are credible.

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

Here is a link to the Opinion in State v. Bell:
https://www.courts.wa.gov/opinions/pdf/860186.pdf

3. State v. M.B.: On April 22, 2025, Division One of the COA affirms the Clark County Superior Court conviction of M.B. for second degree rape. The charge was based on evidence of the victim's incapacity to consent at the time of the sexual intercourse. Among other things, defendant loses his argument on appeal that the trial judge misapplied the Rape Shield Statute (RCW 9A.44.020), which bars, with some exceptions, a defendant from proffering evidence of a victim's past sexual behavior to prove credibility or consent.

At trial, defendant wanted to submit evidence that the victim had sex with another person before dating defendant, and that she was particularly angry and vengeful toward the defendant because (1) the defendant had stopped dating her after she let him have consensual sex with

her over a period of time, and (2) the victim's anger was in part fueled by the fact that a previous boyfriend had likewise dumped her after she had let that boyfriend have consensual sex with her. The Court of Appeals rules that such a fact pattern does not qualify for an exception to application of the Rape Shield Statute.

Here is a link to the Opinion in State v. M.B.:
https://www.courts.wa.gov/opinions/pdf/D2%2059338-6-II%20Unpublished%20Opinion.pdf

4. State v. Marvin Love Tate: On April 24, 2025, Division Three of the COA reverses the Benton County Superior Court jury convictions of defendant for (A) first degree unlawful possession of a firearm, (B) use of drug paraphernalia, and (C) fourth degree assault with domestic violence against an intimate partner. The drug paraphernalia conviction is reversed with prejudice because the charge was barred by the statute of limitations. The other two convictions are reversed based on impermissible opinion testimony from a law enforcement officer, and those charges are remanded for retrial in Superior Court.

The Tate Opinion's discussion of the "opinion testimony" issue includes the following:

> Second, Mr. Tate claims that [the officer] made statements vouching for the credibility of other police officers involved in the case when he described them as "'the people [he] can trust' and opined that 'whatever is documented in a police report is the truth.'"
>
> Here, defense counsel, after a long sequence of questioning, accused [the officer] of having no personal knowledge as to what happened to Mr. Tate's vehicle from the time Mr. Tate was taken into custody until the time [the officer] examined the vehicle the next day. [The officer] claimed that defense counsel was incorrect, and that even though [the officer] did not personally follow the vehicle to impound, he had confidence in what happened to it because other officers report what they do with evidence. He further stated that "those are the people that I trust and what is written in the reports is factual."
>
> Standing alone, this testimony could be viewed as explanation of internal police evidence procedures. However, [the officer's] statement that "those are the people that I trust," . . .. must be viewed in the context of [the officer]'s testimony as a whole. And when doing so, as discussed below, this statement becomes much more problematic.
>
> Third, Mr. Tate claims that [the officer] expressed his disdain "for 'people like Mr. Tate,' whose criticisms of police racism he dismissed as a 'worn[-]out record.'" Mr. Tate argues these statements were explicit opinions about the veracity of witnesses and the accused. [Defendant] further argues that the testimony appealed to a racist stereotype that Black people who are vocal about racism they experience are lying or exaggerating and cannot be trusted. The State responds that defense counsel was inquiring into the integrity of [the officer] by asking whether he would only collect inculpatory evidence, and that [the officer] was answering the question regarding his fairness as a police officer.
>
> We agree that defense counsel was inquiring into the integrity of [the officer] when asking several questions about whether he only collects inculpatory evidence and claiming that [the officer's] biases and prejudices may have impacted his investigation into this matter. Additional context is helpful in analyzing the testimony. On direct examination, [the officer] made the following statements regarding Mr. Tate's behavior at the Towne Crier:

> Q. So, after the screaming and yelling, what did you and the officers do next?
>
> A. . . . . They had driven up next to me to talk to me. I talked to 'em for several minutes. I was talking. I was trying to deescalate them. They continued to pretty much berate me and the other officers on scene, calling us racist cops who only want to kill black people. Kind of generally not about the specific situation that was there, the brawl. It was just police nationwide as a whole. At that time, that was the ramp-up towards that whole narrative exploding nationwide, and that was goin' on and I was trying to calm them down about it and answer any questions they may have.
>
> Q. When you say "they" who are you referring to?
>
> A. Mostly Marvin [Tate] and Kathy [Larson], and I believe Robert [Andrews) was part. He was the driver. He was part of the conversation, but I specifically remember dealing with trying to answer Marvin's questions as well as Kathy's.

Later, on recross-examination, [the officer] stated the following after defense counsel claimed [the officer] had prejudice as a police officer:

> A. If you're implying that there's any ill will goin' in my investigation or if I have any particular prejudices towards [Mr. Tate], you're absolutely wrong. I do not -- that narrative has been worn out over the past couple years, and frankly I'm sick and tired of it. I know who I am. I know my integrity. I know why I'm in this job. I know I'm not a liar. I'm not a racist. Even though I get told that way too often by people like Mr. Tate, that is not—that isn't what it is. It's a worn out record at this point, and I'm not gonna stand up for it here either.

The statements that "even though I get told that way too often by people like Mr. Tate" and "it's a worn-out record," are not appropriate responses, especially considering [the officer] first referenced the racist police "narrative exploding nationwide." [The officer] inserted these defensive opinions of his own accord. The question asked by defense counsel did not ask [the officer] about his opinion of Mr. Tate, and the "worn-out record" phrase can be construed to mean he is told way too often by Black individuals, who may have distrust in police officers, that he is a racist officer who wants to kill Black people. As previously mentioned, a police officer's testimony carries an aura of reliability, and their expertise is determining when an arrest is justified. To discredit Mr. Tate's apparent distrust in police officers by claiming it is a "worn-out record" is problematic.

Here is a link to the Opinion in State v. Tate:
https://www.courts.wa.gov/opinions/pdf/396681_unp.pdf

5. State v. Jaycee Cedric Thompson: On April 28, 2025, Division One of the COA affirms the King County Superior Court conviction of defendant for attempted theft of a vehicle. The Court of Appeals rejects defendant's argument that the trial court failed to follow Miranda standards when the trial court allowed into evidence a law enforcement officer's testimony about statements elicited by the officer from defendant after defendant was taken into custody.

Officers responding to a call of a just-committed theft of a vehicle tackled Thompson, who tried to flee from them after having gotten out of the vehicle. Shortly before the officers tackled Thompson, he had been shot in the foot when confronted by the civilian victim of the car theft.

After the officers tackled Thompson, they handcuffed him. The Opinion in Thompson states that at that point, Thompson stated that he may have been shot. The Court of Appeals Opinion states that, before Mirandizing Thompson, an officer responded to Thompson's statement as follows:

> [One of the officers asked] "why would you have got shot, tell me that?" Thompson answered, "I don't know." The officer continued, "Tell me why you think you got shot?" Again, Thompson answered, "I don't know." The officer repeated, "Again, why do you think you got shot?" and "who shot you?" Thompson responded, "I don't know who shot me."

The Court of Appeals Opinion asserts that the State concedes in the case that Thompson was "in custody" for Miranda purposes when the un-Mirandized above-noted conversation took place prior to Mirandizing. But the Thompson Opinion agrees with the State that Miranda case law does not require suppression of the statements of Thompson in that initial conversation. Included in the Opinion's discussion of this issue is the following:

> Here, it is undisputed Thompson was in custody and had not been read his Miranda rights when he was initially questioned. As such, the dispositive issue is whether the police officers' questions were reasonably likely to elicit an incriminating response. As noted previously, and as Thompson explains in his appellate briefing, the specific questions at issue here asked why Thompson had been shot and who shot him. These questions were intended to secure the scene, ensure the officers' safety, ascertain whether Thompson was injured, and determine who shot him. As [State v. Richmond, 65 Wn. App. 541 (1992) and State v. Lane, 77 Wn.2d 860 (1970)] confirm, the officers here could properly ask Thompson such questions before he was read his Miranda rights.
>
> Thompson argues, "the officer did not merely ask questions to ascertain whether Mr. Thompson was injured or the extent of the injury. Rather, the officer's questions were about why someone shot Mr. Thompson and who shot him." Thompson relies on [In re Pers. Restraint of Cross, 180 Wn.2d 664, 684-85 (2014)], in which an officer told a suspect "sometimes we do things we normally wouldn't do and feel bad about it later." Our Supreme Court held that this comment was designed to elicit an incriminating response because any response, including silence, would be incriminating. [Cross at 684-86]. The court further explained all of the defendant's possible responses to the police officers' comments were incriminating because the comment "implie[d] Cross committed the murders."
>
> Thompson's reliance on Cross is misplaced. Unlike the defendant in Cross, Thompson could have responded to the police officers' questions without incriminating himself. When asked who shot him and why he was shot, Thompson could have indicated Mohamed shot him as a result of an argument.
>
> Similarly, the officers' questions did not imply that Thompson committed any crime. To the contrary, the questions asked whether Thompson was the victim of a crime and were reasonably likely to elicit a response that incriminated someone else (Mohamed). Thus, the court's holding in Cross is inapposite.

[Some paragraphing revised for readability]

Here is a link to the Opinion in State v. Thompson:

https://www.courts.wa.gov/opinions/pdf/861107.pdf

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WASHINGTON STATE ATTORNEY GENERAL OPINION

AGO 2025 NO. 2 (APRIL 21, 2025) OPINES THAT THERE IS NO AUTHORITY FOR REMOVING LAW ENFORCEMENT OFFICERS FROM A PID ("*BRADY*") LIST BASED SIMPLY ON THE PASSAGE OF TIME

The Case Law Update of the Washington Association of Prosecuting Attorneys (see https://waprosecutors.org/caselaw/) for April 28, 2025, includes the following note regarding a recent Washington Attorney General Opinion addressing Brady Lists (the WAPA note includes a hyperlink to the AG Opinion:

> *PID* lists – There is no authority for removing law enforcement officers from a PID ("*Brady*") list based simply on the passage of time. Whether other circumstances might justify removal from such a list is a fact-specific inquiry not susceptible to an across-the-board answer. Case law makes clear that prosecutors should err on the side of disclosure in any case in which they are unsure. AGO 2025 No. 2 (April 21, 2025).

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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