LEGAL UPDATE FOR WASHINGTON LAW ENFORCEMENT

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MARCH 2023

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NINTH CIRCUIT OF THE UNITED STATES COURT OF APPEALS

CIVIL RIGHTS ACT SECTION 1983 CIVIL LIABILITY FOR LAW ENFORCEMENT: SUBSTANTIVE DUE PROCESS STATE-CREATED DANGER THEORY OF PLAINTIFFS (THE ESTATES OF TWO DEAD CHILDREN PLUS THEIR LIVING FATHER) MUST GO TO FACT-FINDER WHERE PLAINTIFFS ALLEGED THAT LAW ENFORCEMENT SECRETED THE CHILDREN WITH THEIR TROUBLED MOTHER, WHO THEN DROWNED THEM

In Murgia v. Langdon, ___ F.4th ___ , 2023 WL ___ (9th Cir., March 14, 2023), a three-judge Ninth Circuit panel overturns a U.S. District Court dismissal order and rules 2-1 against law enforcement (and others) in a Civil Rights Act lawsuit where troubled mother drowned two of her children. His claim of a constitutional violation by law enforcement is grounded in the Due Process Clause, which has been interpreted to allow a Substantive Due Claim where government representatives either (1) violate a special relationship responsibility, or (2) cause harm through a state-created danger.

The ruling for Plaintiffs in this case is that they have alleged facts that support a state-created danger theory.

A Ninth Circuit staff synopsis (which is not part of the Ninth Circuit Opinion) summarizes the Majority Opinion and Dissenting Opinion in the case as follows:

> Plaintiff Jose Murguia called 911 seeking emergency mental health assistance for Heather Langdon, with whom he lived and had five children. This call set in motion a chain of events that ultimately led to the death of Langdon's and Jose's ten-month-old twin sons, at Langdon's own hand.
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> Over the course of that day, Langdon interacted with three groups of law enforcement officers.
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> First, Tulare County Sheriff's Department Deputies Lewis and Cerda arrived at the Murguia home where they separated Jose from Langdon, leaving her with the twins; the deputies then allowed Langdon and a neighbor (Rosa) to take the twins to church and prevented Jose from following.
>
> Second, a City of Visalia police officer drove Langdon and the twins from the church to a women's shelter.
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> Third, City of Tulare police officers, acting in part based on information provided by a County of Tulare social worker, transported Langdon and the twins from the shelter to a motel to spend the night. Left unsupervised at the motel where she continued to suffer from a mental health crisis, Langdon drowned the twins.
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> [*Majority Opinion's Rulings*]
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> The panel first made clear that the only two exceptions to the general rule against failure-to-act liability for § 1983 claims presently recognized by this court were the special relationship exception and the state-created danger exception. The panel therefore rejected Plaintiffs' assertion that the failure to comply with a legally required duty, without more, can give rise to a substantive due process claim.
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> The panel further held that the district court correctly held that the special-relationship exception did not apply here because Defendants did not have custody of the twins.
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> The panel next held that Plaintiffs' state-created danger claim against deputies Lewis and Cerda failed because Plaintiffs failed to allege facts from which one could plausibly conclude that Defendants created or enhanced any danger to the twins. The panel could not say, however, that amendment would be futile given Plaintiffs' vague allegations and because the district court applied an incorrect "custody" standard —a asking whether the twins were in Langdon's custody before and after Lewis and Cerda intervened rather than asking whether the twins were rendered more vulnerable by Lewis's and Cerda's actions. Accordingly, the panel vacated the district court's dismissal order with an instruction to allow Plaintiffs to amend their complaint.
>
> The panel held that Plaintiffs adequately stated their § 1983 claims against City of Tulare Police Sergeant Garcia under the state-created danger exception. The panel agreed with Plaintiffs that Garcia increased the risk of physical harm to the twins by arranging a

room for them at a motel, transporting Langdon and the twins from the shelter to the motel, and leaving them there. The panel further concluded that Plaintiffs pleaded facts plausibly demonstrating that Garcia acted with deliberate indifference to the risk that Langdon would physically harm the twins.

The panel similarly concluded that Plaintiffs adequately alleged a state-created danger claim against social worker Torres. When Torres provided Garcia with false information, she rendered the twins more vulnerable to physical injury by Langdon by eliminating the most obvious solution to ensuring the twins' safety: returning them to Jose's custody. Given the allegations that Torres knew about Langdon's history of abuse, the panel concluded that the complaint alleged that Torres was aware of the obvious risk of harm Langdon presented to the twins and acted with deliberate indifference.

Addressing Plaintiffs' arguments that Defendants' wrongful affirmative acts deprived Plaintiffs of their constitutional rights, the panel rejected assertions that Lewis and Cerda deprived Plaintiffs of their rights to familial association by temporarily separating Jose and the twins, and deprived Jose of his Fourth Amendment right to be free from unreasonable seizure. Plaintiffs' remaining allegations of wrongful acts did not require a separate analysis.

Finally, because the panel reversed the dismissal of some of Plaintiffs' § 1983 claims against social worker Torres and Sergeant Garcia, the panel reversed the district court's dismissal of Plaintiffs' claims [under Monell v. Dep't of Soc. Servs., 436 U.S. 658 (1978)] against the County and reversed the dismissal of Plaintiffs' state law claims, and remanded for further proceedings.

[*Dissenting Opinion's Contentions*]

Dissenting in part, Judge Ikuta stated that the majority's expansion of the state-created danger doctrine into the realm of tort law conflicts with Supreme Court precedent and is out of step with this Court's broad state-created danger doctrine.

[Judge Ikuta contended that] the majority made three mistakes.

First, the Majority Opinion found a substantive due process violation in the absence of any abusive exercise of state authority.

Second, the majority opinion indicated that officials may be liable for failing to take affirmative actions to protect children from a dangerous parent. But, as DeShaney v. Winnebago Cnty. Dep't of Soc. Servs., 489 U.S. 189 (1989), held, that failure to protect is not an egregious abuse of state-assigned power.

Finally, the Majority Opinion imposed liability for substantive due process violations when the plaintiffs' allegations amounted to mere negligence.

[Some paragraphing revised for readability; bracketed subheadings added]

Result: Reversal of order of U.S. District Court (Eastern District of California) that dismissed the section 1983 claim of Plaintiffs.

CIVIL RIGHTS ACT SECTION 1983 CIVIL LIABILITY FOR LAW ENFORCEMENT: MOTHER OF 19-YEAR-OLD CIVILIAN WHO WAS SHOT BY HER SON'S ENEMY IN IN THE 2020 SEATTLE "CHOP ZONE" CANNOT PURSUE A SECTION 1983 LAWSUIT AGAINST THE CITY OF SEATTLE FOR THE ACTIONS OF THAT THIRD PARTY ENEMY UNDER A GOVERNMENT-CREATED-DANGER THEORY; 3-JUDGE PANEL'S MAJORITY OPINION CONCLUDES THAT THE DANGER ALLEGEDLY CREATED BY THE CITY OF SEATTLE WAS NOT PARTICULARIZED TO THE 19-YEAR-OLD VICTIM OF HIS THIRD PARTY ENEMY'S ACTIONS

In Sinclair v. City of Seattle, ___ F.4th ___ , 2023 WL ___ (9th Cir., March 1, 2023), a three-judge Ninth Circuit panel applies the general rule that government actors who are otherwise subject to section 1983 Civil Rights Act lawsuits cannot be held liable for failing to protect civilians from harm from third party civilian actors.

There is a "state-created danger" exception to this general rule where (1) a government actor's affirmative actions created or exposed the Plaintiff to "an actual, particularized danger" that the Plaintiff would not otherwise have faced, (2) the injury that the Plaintiff suffered was foreseeable, and (3) the government actor was deliberately indifferent to the known danger. The Ninth Circuit panel concludes that the "particularized danger" requirement was not met under the factual allegations of the Plaintiff in this case.

The Ninth Circuit's staff summary (which is not part of the Ninth Circuit Opinions) provides the following synopsis of the Majority Opinion and Concurring Opinion in the case:

> The panel affirmed the district court's dismissal for failure to state a claim of an action brought against the City of Seattle pursuant to 42 U.S.C. § 1983 by Donnitta Sinclair, whose nineteen-year-old son was shot to death in 2020 in the Capitol Hill Occupied Protest ("CHOP") zone, an area that the Seattle Police Department and the Mayor of Seattle had surrendered to protestors.
>
> Sinclair alleged that the City's actions and failures to act regarding CHOP created a foreseeable danger for her son, that the City was deliberately indifferent to that danger, and that as a result, the City was liable for violating her Fourteenth Amendment substantive due process right to the companionship of her adult son.
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> The panel stated that, unlike almost every other circuit, this circuit recognized Sinclair's substantive due process right to the companionship of her adult son.
>
> And Sinclair properly alleged that the City acted with deliberate indifference to the danger it helped create, which caused her son's death. It was self-evident that the Seattle Police Department's wholesale abandonment of its East Precinct building, combined with Mayor Durkan's promotion of CHOP's supposedly festival-like atmosphere, would create a toxic brew of criminality that would endanger City residents.
>
> But the danger to which the City contributed was not particularized to Sinclair or her son, or differentiated from the generalized dangers posed by crime, as this circuit's precedent required. Because the City's actions were not directed toward Sinclair's son and did not otherwise expose him to a specific risk, the connection between Sinclair's alleged injuries and the City's affirmative actions was too remote to support a § 1983 claim.

Concurring, Judge R. Nelson stated that this circuit has created a split with other circuits by recognizing a substantive due process right to the companionship of one's adult children. In establishing the right on which Sinclair's claim depended, this circuit's precedent failed to engage in the proper analysis required by Washington v. Glucksberg, 521 U.S. 702 (1997). Had this circuit done so, it should have reached the conclusion that sister circuits already have: There is no constitutional right to recover for the loss of Sinclair's companionship with her adult son. Judge R. Nelson stated that this circuit should correct its prior erroneous precedent en banc [i.e., by an 11-judge panel opinion].

[Some paragraphing revised for readability]

Result: Affirmance of order of U.S. District Court (Western District of Washington) that dismissed the section 1983 claim of Plaintiff.

TWO FOURTH AMENDMENT RULINGS IN A CRIMINAL CASE: A NINTH CIRCUIT PANEL RULES UNDER THE FOURTH AMENDMENT THAT (1) OFFICERS DID NOT – UNDER THE TOTALITY OF THE CIRCUMSTANCES THAT INCLUDED THE SUSPECT-DRIVER HAVING AN EMPTY FANNY PACK SLUNG OVER HIS SHOULDER – UNREASONABLY PROLONG A TRAFFIC STOP BY ASKING THE DRIVER A SERIES OF ROADSIDE-SAFETY-RELATED QUESTIONS DURING A TRAFFIC STOP AND ASKING THE DRIVER TO GET OUT OF HIS CAR (WITH THE TOTALITY OF THE CIRCUMSTANCES ADDING UP TO REASONABLE SUSPICION THAT THE PREVIOUSLY CONVICTED FELON HAD A GUN IN HIS CAR); AND (2) CONSENT FROM THE DRIVER TO A SEARCH OF THE CAR WAS VOLUNTARY

In U.S. v. Taylor, ___ F.4th ___ , 2023 WL ___ (9th Cir., March 1, 2023), a three-judge Ninth Circuit panel rules in favor of the prosecution and determines under the Fourth Amendment and under the totality of the circumstances (1) that a traffic stop was not unreasonably prolonged in light of the totality of the circumstances encountered by the officers, and (2) the defendant's consent to a search of his car was voluntary.

The following summary of the Fourth Amendment rulings is excerpted from the Ninth Circuit's staff summary (which is not part of the Ninth Circuit Opinion):

> • An officer's asking Taylor two questions about weapons early in the encounter—once before the officer learned that Taylor was on federal supervision for being a felon in possession and once after—was a negligibly burdensome precaution that the officer could reasonably take in the name of safety.
>
> • An officer did not unlawfully prolong the traffic stop when he asked Taylor to exit the vehicle.
>
> • The officers' subjective motivations are irrelevant because the Fourth Amendment's concern with reasonableness allows certain actions to be taken in certain circumstances, whatever the subjective intent. **[LEGAL UPDATE EDITOR'S NOTE: The Washington Supreme Court has held that subjective intent is relevant to some issues under article I, section 7 of the Washington constitution, but there do not appear to be facts in this case that would support the defendant's pretext argument regarding the duration of his traffic stop detention in this case.]**

• A criminal history check and the officers' other actions while Taylor was outside the car were within the lawful scope of the traffic stop.

• Even if, contrary to precedent, the frisk and criminal history check were beyond the original mission of the traffic stop, they were still permissible based on the officers' reasonable suspicion of an independent offense: Taylor's unlawful possession of a gun.

• As to whether the officers violated the Fourth Amendment when they searched Taylor's car, the panel held that the district court did not err in finding that Taylor unequivocally and specifically consented to a search of the car for firearms.

Facts: (Excerpted from the Ninth Circuit Opinion in Taylor)

On July 10, 2020, Officers Anthony Gariano and Brandon Alvarado were patrolling in Northeast Las Vegas when they spotted a car with no license plate or temporary registration tags. The events that followed were recorded on the officers' body-worn cameras.

[Officers] Gariano and Alvarado stopped the driver, Xzavione Taylor, who had no driver's license or other means of identification. When Gariano asked Taylor if he knew why police had pulled him over, Taylor said that he did, explaining that he had just acquired the vehicle from his aunt.

As part of his standard questioning during traffic stops, Gariano asked Taylor whether the vehicle contained any "guns/knives/drugs," which Taylor denied. In response to Gariano's inquiry whether Taylor had ever been arrested before, including for "anything crazy, anything violent," Taylor stated that he was on parole (i.e., federal supervision) for being a felon in possession of a firearm. Taylor also provided Gariano his name, Social Security number, and date of birth.

[Officer] Gariano later confirmed in his testimony that "everything changed" when he learned that Taylor had been convicted for being a felon in possession because Gariano became concerned that Taylor might be armed. Gariano asked Taylor if he was in violation of his supervision conditions or if he had weapons on him, which Taylor again denied. About a minute and thirty seconds into their conversation, Gariano asked Taylor to step out of the car. Taylor complied.

Until that point, it is not clear how much the officers could see of Taylor's person. Gariano's bodycam footage showed that, at a minimum, Gariano likely could see a red strap on Taylor's left shoulder while Taylor remained seated in his car. Once Taylor emerged from the car, however, it became obvious that he was wearing a distinctive unzipped red fanny pack slung across his upper body.

The unzipped fanny pack appeared to be light and empty. Gariano asked Taylor to remove the fanny pack, and, in the process, Gariano touched, slightly opened, and lifted the pack.

Both officers later explained that the empty fanny pack aroused their suspicions. [Officer] Alvarado testified that "it's known that's where subjects primarily sometimes conceal weapons." Gariano similarly testified that "we've been seeing an . . . uptick of

people concealing firearms in fanny packs that are slung around their body," and that he "just wanted to make sure that there [were] no weapons on his person at that point."

Alvarado chatted with Taylor and pat-frisked him. The two recognized each other because Alvarado had been a correctional officer at the prison where Taylor was previously incarcerated. As the district court described, the interaction was "calm" and, in fact, "friendly."

[Officer] Gariano, meanwhile, returned to his patrol car and ran a criminal history check on Taylor, which would also allow him to verify Taylor's identity. By the time Gariano returned to his patrol car to initiate this computerized check, Taylor had been stopped for around three minutes and had been outside his vehicle for approximately 40 seconds.

From his records check, Gariano learned that Taylor had at least two previous felony convictions for grand larceny and robbery. Gariano exited his patrol car and asked Taylor for consent to search his vehicle. The conversation went as follows:

> GARIANO: Is there anything in the car?
> TAYLOR: No, no I just got it from my aunt.
> GARIANO: No guns?
> TAYLOR: No, sir.
> GARIANO: Alright, cool if we check?
> TAYLOR: It don't matter, I just got it, I just got it, it don't matter to me.

Gariano searched Taylor's car for less than a minute and found a handgun under the driver's seat. Alvarado then placed Taylor under arrest. Taylor received Miranda warnings. He admitted to the officers that he carried the gun for protection, explaining that he normally placed it in the red fanny pack but kept it under the seat while driving.

Suppression Proceedings:

A federal grand jury indicted Taylor for being a felon in possession of a firearm. See 18 U.S.C. § 922(g)(1). Taylor filed a motion to suppress evidence of the gun and his ensuing incriminating statements as the fruits of an unlawful seizure and search. In his view, the officers violated the Fourth Amendment by prolonging the traffic stop without reasonable suspicion and by searching the car without proper consent.

After a suppression hearing at which Gariano and Alvarado both testified, a magistrate judge recommended granting Taylor's motion to suppress. The district court [judge] disagreed [with the magistrate]. The district court [judge] found that once officers observed Taylor's unzipped fanny pack, under the totality of circumstances they had reasonable suspicion to believe that Taylor was a felon in possession of a firearm, so the stop was not unlawfully prolonged. After a remand to the magistrate judge for a recommendation on the consent question, the district court [judge] agreed with the magistrate judge that Taylor voluntarily consented to a search of his car. The court thus denied Taylor's motion to suppress.

[Legal Analysis]

[1. *In light of the totality of the circumstances, the traffic stop was not unreasonably prolonged*.]

Under the Fourth Amendment, a seizure for a traffic stop is "a relatively brief encounter," "more analogous to a so-called Terry stop than to a formal arrest." Rodriguez v. United States, 575 U.S. 348, 354 (2015) . . . . To be lawful, a traffic stop must be limited in its scope: an officer may "address the traffic violation that warranted the stop," make "ordinary inquiries incident to the traffic stop," and "attend to related safety concerns." [Rodriguez] The stop may last "no longer than is necessary to effectuate" these purposes and complete the traffic "mission" safely. [Rodriguez] However, a stop "may be extended to conduct an investigation into matters other than the original traffic violation" so long as "the officers have reasonable suspicion of an independent offense." United States v. Landeros, 913 F.3d 862, 867 (9th Cir. 2019).

In this case, it is undisputed that the officers had a proper basis for stopping Taylor: he was driving without license plates or temporary tags. Once Taylor was stopped on the side of the street, [Officer] Gariano was permitted to ask Taylor basic questions, such as whether Taylor knew why he had been pulled over, whether he had identification, whether he had been arrested before, and whether he had any weapons in the vehicle. These are "ordinary inquiries" incident to a traffic stop made as part of "ensuring that vehicles on the road are operated safely and responsibly," or else are "negligibly burdensome precautions" that an officer may take "in order to complete his mission safely." [Rodriguez] . . . .

Here, as is typical, these inquiries took mere seconds and were properly within the mission of the stop. [Officer] Gariano did fleetingly mention drugs in the same breath that he asked about weapons, but Taylor gave a single answer to the combined question, and this did not measurably prolong the stop. [Rodriguez]

It is of no moment, as Taylor protests, that Gariano asked about weapons a second time within the first 90 seconds of the stop, after Taylor had already responded in the negative. There is no strong form "asked and answered" prohibition in a Fourth Amendment analysis, the touchstone of which is reasonableness.

Asking two questions about weapons early in the encounter—once before Gariano learned that Taylor was on federal supervision for being a felon in possession and once after—was a negligibly burdensome precaution that Gariano could reasonably take in the name of officer safety. See Maryland v. Wilson, 519 U.S. 408, 413 (1997) (noting that "traffic stops may be dangerous encounters"). The two questions did not unreasonably prolong the stop. Nothing in our precedents prevented Gariano from verifying an answer to an important question that bore on the danger Taylor might pose.

[Officer] Gariano also did not unreasonably prolong the stop when he asked Taylor to step out of the vehicle. Decades ago, in Pennsylvania v. Mimms, 434 U.S. 106, 110–11 (1977) (per curiam), the Supreme Court held that police officers during a traffic stop may ask the driver to step out of the vehicle. . . . The rationale is officer safety: "[t]raffic stops are 'especially fraught with danger to police officers,'" Rodriguez, 575 U.S. at 356 (quoting Arizona v. Johnson, 555 U.S. 323, 330 (2009)), and when it comes to having a driver stand outside his vehicle, the "legitimate and weighty" justification of officer safety outweighs the "additional intrusion" on the driver, which "can only be described as de minimis." Mimms, 434 U.S. at 110–11. Once outside the stopped vehicle, the driver may also "be patted down for weapons if the officer reasonably concludes that the driver 'might be armed and presently dangerous.'" Johnson, 555 U.S. at 331

By this authority, [Officer] Gariano did not unlawfully prolong the traffic stop when he asked Taylor to exit the vehicle. Taylor argues otherwise, claiming that once he disclosed his felon-in-possession conviction, officers pivoted to a "fishing expedition" into whether Taylor might have a firearm.

This argument is misplaced. The officers' subjective motivations are irrelevant because "the Fourth Amendment's concern with 'reasonableness' allows certain actions to be taken in certain circumstances, whatever the subjective intent." Whren v. United States, 517 U.S. 806, 814 (1996). In this case, Mimms and its progeny made clear that officers could have Taylor exit his vehicle in the interest of officer safety. See Johnson, 555 U.S. at 331. That was so regardless of whether the officers may have subjectively believed they were on to something more than a vehicle lacking license plates. The officers' subjective motivations, whatever they may have been, could not change the objective reasonableness of their actions. . . .

[LEGAL UPDATE EDITOR'S NOTE: As noted above, the Washington Supreme Court has held that subjective intent is relevant to some issues under article I, section 7 of the Washington constitution, but there do not appear to be facts in this case that would support the defendant's pretext argument regarding the duration of his traffic stop detention in this case.]

Thus far, we have considered the officers' conduct before Taylor exited his car, and we have found that it formed part of the lawful traffic stop. Taylor maintains, however, that the remaining portion of his seizure was too attenuated from the traffic stop. From Taylor's perspective, once he was outside the car, the stop was unconstitutionally prolonged, meaning that the later-discovered gun and Taylor's own inculpatory statements should have been suppressed.

Taylor's argument is unavailing. Doctrinally, we can approach this issue in two different ways, with both paths leading to the same answer: the officers did not violate the Fourth Amendment. The first ground for affirmance on this point is that [Officer] Gariano's criminal history check and the officers' other actions while Taylor was outside the car were within the lawful scope of the traffic stop. Gariano thus did not improperly prolong the stop when he spent a few minutes consulting computerized databases in his patrol car. In United States v. Hylton, 30 F.4th 842 (9th Cir. 2022), we specifically rejected the argument that a "criminal history check [is] a prolongation of the stop and need[s] to be supported by independent reasonable suspicion." . . . .

Taylor asserts that Hylton should not govern because here the officers knew or should have known that Taylor posed no danger when he was compliant during the stop, which had friendly overtones. Taylor's effort to distinguish Hylton fails. Taylor again improperly focuses on what the officers might have subjectively believed when what matters, under Hylton, is that conducting a criminal records check in connection with a traffic stop is objectively reasonable. The officers here did not abandon the traffic stop and acted properly under Hylton. It is true that Taylor was compliant. But that a driver is acting cooperatively does not prevent police from performing actions that are permissibly within the mission of a traffic stop. Regardless, the officers clearly did have a basis to believe that Taylor posed a danger, as we will discuss.

Taylor points out that officers began the process of checking him for weapons before [Officer] Gariano went to his patrol car to check criminal history, claiming that this part of

the pat-down also unreasonably extended the stop. But as we noted above, officers in the course of a lawful investigatory stop of a vehicle may pat down the driver for weapons "if the officer reasonably concludes that the driver 'might be armed and presently dangerous.'" . . . Here, the officers could have had that reasonable suspicion once they observed Taylor fully outside of the vehicle.

The reasonable suspicion standard "is not a particularly high threshold to reach" and is less than probable cause or a preponderance of the evidence. . . . The standard allows officers to make "commonsense judgments and inferences about human behavior." . . . . In doing so, officers may "draw on their own experience and specialized training" to arrive at conclusions "that might well elude an untrained person." . . . (quoting United States v. Arvizu, 534 U.S. 266, 273 (2002)).

At the point when Gariano asked Taylor, consistent with Mimms, to exit the vehicle, the officers knew that Taylor was driving a vehicle without license plates or registration tags, that he lacked identification, and that he was on federal supervision for being a felon in possession of a firearm. But once Taylor stepped out of the car, officers had another data point: Taylor's distinctive unzipped fanny pack slung across his chest. Both officers testified that fanny packs are commonly used to store weapons, with Gariano noting police had seen "an uptick" in this behavior. The district court did not clearly err in crediting the officers' testimony. . . . As Officer Alvarado testified, it was "odd" that Taylor had the fanny pack "on his person" when "there was nothing in it."

We of course recognize that standing alone, a fanny pack is not necessarily an unusual item of apparel. We certainly do not suggest that officers have reasonable suspicion to frisk anyone who wears that accessory. But here, the fanny pack was curiously empty and unzipped, and it did not stand on its own: officers had just pulled Taylor over for driving without license plates, Taylor had no identification, and, most critically, Taylor had just disclosed that he was on federal supervision for being a felon in possession of a firearm. When combined with the officers' experience with fanny packs, the circumstances taken as a whole created reasonable suspicion that Taylor, who was not permitted to have a gun, might have one. . . . Reasonable suspicion existed regardless of whether Northeast Las Vegas is a high crime area, a point Taylor disputes.

We mentioned above that there is a second doctrinal pathway to affirming the denial of Taylor's motion to suppress as to the duration of the stop once Taylor stepped out of the car. The second pathway is this: even if officers prolonged the encounter beyond the original mission of the traffic stop, they had a sufficient basis to do so. As we have described, the officers knew about Taylor's traffic offenses and that he was on federal supervision for being a felon in possession, and once Taylor stepped out of the car, the officers could clearly see Taylor's unzipped, empty fanny pack. At that point, under the totality of the circumstances, and for the reasons we gave above, officers had "reasonable suspicion of an independent offense." . . . Thus, even if, contrary to precedent, the frisk and criminal history check were beyond the mission of the traffic stop, they were still permissible based on the officers' reasonable suspicion of an independent offense: Taylor's unlawful possession of a gun.

[2. *The U.S District Court did not err in concluding that Taylor's consent was voluntary*]

Having concluded that the stop was not unlawfully prolonged, we turn next to whether officers violated the Fourth Amendment when they searched Taylor's car. "Warrantless

searches are presumptively unreasonable under the Fourth Amendment, subject to certain exceptions." Verdun v. City of San Diego, 51 F.4th 1033, 1037–38 (9th Cir. 2022). Consent is one such "specifically established" exception. Schneckloth v. Bustamonte, 412 U.S. 218, 219 (1973). Police may search a car when they are given "voluntary," "unequivocal[,] and specific" consent. United States v. Basher, 629 F.3d 1161, 1167–68 (9th Cir. 2011).

The district court did not err in concluding that Taylor's consent was voluntary. We analyze the voluntariness of consent based on "the totality of all the circumstances," Schneckloth, 412 U.S. at 227, with our precedents focusing on five non-exclusive factors: "(1) whether defendant was in custody; (2) whether the arresting officers had their guns drawn; (3) whether Miranda warnings were given; (4) whether the defendant was notified that [he] had a right not to consent; and (5) whether the defendant had been told a search warrant could be obtained." Basher, 629 F.3d at 1168 (quoting United States v. Patayan Soriano, 361 F.3d 494, 502 (9th Cir. 2004)). A defendant's consent is not voluntary "if his will has been overborne and his capacity for self determination critically impaired." Schneckloth, 412 U.S. at 225 (quoting Culombe v. Connecticut, 367 U.S. 568, 602 (1961)).

Here, Taylor was not in custody, so no Miranda warnings were given or required, see Berkemer v. McCarty, 468 U.S. 420, 440 (1984); officers did not have their guns drawn; and the officers never threatened Taylor that a search warrant could be obtained if he refused consent. These factors all suggest that Taylor's consent was voluntary.

The government was not required to prove that Taylor knew he had a "right to refuse consent" as a "necessary prerequisite to demonstrating a 'voluntary' consent." Schneckloth, 412 U.S. at 232–33. Even so, [the fact] that officers never informed Taylor he had a right not to consent is at least a factor that weighs against voluntariness. [See United States v. Basher, 629 F.3d 1161, 1167–68 (9th Cir. 2011)].

[LEGAL UPDATE EDITOR'S COMMENT: As to the bolded text in the paragraph immediately above, the same cautionary note applies as to vehicle consent searches under article I, section 7 of the Washington constitution. See

- **State v. Ferrier, 136 Wn.2d 103 (1998) (Washington State Supreme Court holds that officers seeking consent in a knock-and-talk situation must give warnings advising occupant of the 3 R's of consent – right to refuse, right to restrict scope, and right to revoke – in order to obtain valid consent to search residence)**

- **State v. Budd, 185 Wn.2d 566 (May 19, 2016) (5-4 Washington Supreme Court majority (1) interprets trial court ruling as having found that officers failed to give full Ferrier warnings, orally or in writing, before entering a child porn suspect's home in conducting a "knock and talk" to seize a computer and search it off site, and (2) holds that giving full warnings immediately after entry of the home did not satisfy Ferrier requirement).**

- **State v. Williams (Harlan M.), 142 Wn.2d 17 (2000) (Request to homeowner to search the homeowner's residence for a felon-guest wanted on an arrest warrant is not subject to the Ferrier rule)**

- **State v. Kennedy, 107 Wn. App. 972 (Div. II, 2001) (Full Ferrier warnings were required for officers to obtain valid consent to enter a motel room where the officers had gone to investigate after receiving a report of illegal drug-dealing by persons in the motel room)**

- **State v. Freepons, 147 Wn. App. 649 (Div. II, 2008) (Ferrier warnings were required to seek consent to search a house for a person believed to have left the scene of a rollover MV accident)**

- **State v. Ruem, 179 Wn.2d 195 (Nov. 27, 2013) (Ferrier warnings will help on the voluntariness question but are not necessarily required in order to obtain voluntary consent from a resident to search that person's residence for a third party non-resident where that third party non-resident is wanted on an arrest warrant; the Court of Appeals notes, however, that voluntariness is assessed on the totality of the circumstances, and that factors in the totality analysis include whether warnings were given and how any warnings were worded)**

- **State v. Westvang, 184 Wn. App. 1 (Div. II, Oct. 14, 2014) (Law enforcement officers are not required to give the three Ferrier "knock and talk" consent warnings - - right to refuse, right to restrict scope and right to retract - - when the officers' manifested intent is to ask a resident for consent to look for an arrest warrant subject the officers reasonably believe is present in the residence)**

- **State v. Witherrite, 184 Wn. App. 859 (Div. III, Dec. 9, 2014) (Ferrier "knock and talk" warnings are not required to obtain single-party consent to search a vehicle, but the Court of Appeals suggests in Witherrite that giving such warnings whenever seeking consent is the "best practice")]**

We have encountered a similar constellation of facts before. In Basher, as here, officers asked for consent while the suspect was not in custody, they did not have guns drawn, and they made no mention of Miranda, search warrants, or the suspect's right to refuse consent. Balancing those factors, we held consent to be voluntary. We struck the same balance even earlier, in United States v. Kim, 25 F.3d 1426, 1432 (9th Cir. 1994).

The balance of the factors here is substantially similar to Basher and Kim. The district court also found—and the bodycam footage bears out—that "the entire interaction was calm[] and could even be described as friendly." That finding is not clearly erroneous. Nothing in the record suggests that Taylor's will was overborne. Schneckloth, 412 U.S. at 225–26.

Citing "racial disparities in the policing of America," Taylor argues that we should treat his consent as involuntary because the officers are of a different race than him. We reject this argument. As the district court found, although tensions between officers and suspects "may be heightened by personal experiences and other sociocultural factors,"

there was no evidence in this case that race affected the voluntariness of Taylor's consent.

Taylor's consent was also unequivocal and specific, and it included consent to search the interior of the car for guns. A suspect may "unequivocal[ly] and specific[ally]" consent by giving express permission, or consent can be inferred from conduct, such as a head nod. See Basher, 629 F.3d at 1167–68. Ultimately, the test "is that of 'objective' reasonableness—what would the typical reasonable person have understood by the exchange between the officer and the suspect?" Florida v. Jimeno, 500 U.S. 248, 251 (1991). The district court did not err in finding that Taylor unequivocally and specifically consented to a search of his car for firearms.

When Gariano asked if there were guns in the car and then asked if he could "check," Taylor unambiguously responded, "it don't matter to me." In context, a reasonable person would have understood Taylor to be consenting to a search of the car for firearms in locations where a gun might be concealed. Taylor's suggestion that he was only consenting to officers walking around the car and looking in the windows is not objectively reasonable given the nature of the exchange. We thus hold that the officers did not violate the Fourth Amendment when searching Taylor's car.

[Some paragraphing revised; some citations omitted, others revised for style; subheadings in the Legal Analysis section were added to the otherwise-excerpted Ninth Circuit text]

Result: Affirmance of U.S. District Court (Nevada) conviction of Xzavione Taylor (based on his conditional guilty plea) for being a felon in possession of a firearm.

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WASHINGTON STATE SUPREME COURT

SPLINTERED PANEL ISSUES FOUR TOTAL OPINIONS WITH CONFLICTING ANALYSIS IN ADDRESSING STATUTORY AND WASHINGTON STATE CONSTITUTIONAL ISSUES (INCLUDING A "SEIZURE" ISSUE) REGARDING FARE ENFORCEMENT ON PUBLIC TRANSIT BY UNIFORMED LAW ENFORCEMENT OFFICERS; SUCH ENFORCEMENT BYH LAW ENFORCEMENT OFFICERS IS NOT SQUARELY PRECLUDED AT THIS TIME UNDER THE COMBINED EFFECT OF THE MULTIPLE OPINIONS IN THE CASE

In State v. Meredith, ___ Wn.2d ___ , 2023 WL ___ (March 16, 2023), the Washington State Supreme Court reverses the conviction of Zachery Meredith for making a false statement to a public servant. In the spring of 2018, Mr. Meredith was riding on a moving a public bus when two police officers began asking passengers for proof that they had paid bus fare. Mr. Meredith was one of three people who failed to provide proof of payment on request. The officer directed Mr. Meredith and the other two persons to leave the bus at the next stop.

Once Meredith was on the transit platform, an officer asked him for identification in order to determine if Meredith had a history of fare violations. Meredith stated that he did not have identification, and Meredith gave a name and date of birth that proved to be false. Meredith was then handcuffed for giving false information to a law enforcement officer.

Meredith was subsequently convicted of giving false information in Snohomish County District Court. The Superior Court affirmed the conviction, as did Division One of the Court of Appeals.

The Court of Appeals avoided analyzing issues related to whether and at what point Meredith was seized by the officer, concluding that the case could be resolved based on the concept that Meredith had consented to the fare enforcement contact by choosing to ride on public transit. The introductory paragraph of the Opinion of the Court of Appeals summarized the ruling as follows:

> Article 1, section 7 of the Washington constitution prohibits warrantless seizures, save for narrow exceptions. Consent is one well-established exception. By boarding a public bus and accepting transportation, Zachery Meredith consented to the conditions of ridership. Those conditions include paying bus fare and complying with a fare enforcement officer's request for proof of payment.
>
> Even assuming that Meredith was seized when an officer requested that he provide proof of payment, the officer's request remained within the scope of Meredith's consent. Because Meredith consented to the conditions of ridership and failed to provide proof of payment when requested, the trial court did not err by denying Meredith's motion to suppress evidence gathered by the officer conducting fare enforcement.

The Washington Supreme Court granted review and reversed the conviction. Of the four Opinions issued by the Supreme Court Justices, none of them adopted the bus-rider implied consent theory of Division One of the Court of Appeals in this case.

Yu Lead Opinion (31 pages)

Three Justices (Yu as author and Gordon McCloud and González as signees) opine that Meredith was unlawfully "seized" under article I, section 7 of the Washington constitution at the point when the officer asked him on the moving bus for proof of fare payment. This was a "seizure," the Yu Opinion asserts, because: (1) the bus was moving (so Meredith could not disembark at that point); (2) there were two uniformed officers involved in the contacts on the bus, and at least one of them was armed; (3) although the officer used a non-threatening tone of voice to make his request, the officer apparently did not use words suggesting that compliance with the request was not mandatory.

At the point when the officer asked Meredith for proof of fare payment on the moving bus, the Yu Opinion notes, the officer did not have reasonable suspicion that Meredith had committed a fare violation or other violation of law, thus making the would-be "seizure" unlawful.

The Yu Opinion also appears to conclude that RCW 36.57A.235 authorizes the use of law enforcement officers to enforce the bus fare requirements, but that the statute is unconstitutional in doing so under the facts of this case:

> Meredith has met his burden of proving that the statute is unconstitutional as applied to the particular facts of this case, such that RCW 36.57A.235 does not provide authority of law to justify [under the Washington State constitution] the disturbance of Meredith's private affairs. The concurring justices [Fearing and Madsen] agree that the statute did not provide authority of law in this case, but they would reach that conclusion as a matter of statutory interpretation, rather than constitutional law.

Stephens Dissenting Opinion (19.5 pages)

Four Justices (Stephens as author and Johnson, Whitener, and Owens as signees) opine that no "seizure" occurred on the bus, and that the conviction of Meredith should be affirmed based on his giving false information when asked for identification after he had disembarked and was on the bus platform.

The Stephens Opinion (with which the Legal Update Editor fully agrees) gives a compelling refutation of the Yu Opinion's legal analysis, point by point. Thus, the Stephens Opinion logically explains that precedents from the Washington Supreme Court and the U.S. Supreme Court do not support the Yu Opinion's "seizure" analysis that depends on the three factual elements noted above in this Legal Update entry. The Stephens Opinion also notes that the Yu Opinion makes some assumptions about the facts that the record does not appear to support.

Fearing Concurring Opinion (12.5 pages)

Judge Fearing is a Division Three Court of Appeals judge who served as a temporary Supreme Court Justice in this case. His Opinion is not joined by any other Justice. His key conclusion is as follows:

> [] I disagree [with the conclusion in the Yu Opinion] that RCW 36.57A.235 authorizes a law enforcement officer to serve as a fare enforcement officer. I would instead hold that [the officer] was not an authorized fare enforcement officer under RCW 36.57A.235 or any other statute, that a fare enforcement officer lacks authority to investigate crime, that general principles behind [article I, section 7 of the Washington Constitution} govern the lawfulness of the seizure of Meredith, that [the officer] lacked authority of law to seize Meredith unless he then possessed reasonable suspicion of Meredith's commission of a crime, and that [the officer] lacked any suspicion that Meredith committed a crime when confronting Meredith.

Madsen Concurring Opinion (1 page)

Justice Madsen's Opinion is not joined by any other Justice. She asserts that she essentially agrees with the Fearing Opinion's assertion that the case should be resolved by the conclusion that the law enforcement officers did not have statutory authority to be fare enforcement officers under the circumstances of this case. Her Opinion expressly states disagreement with the conclusion in the Yu Opinion that Meredith was "seized," for constitutional analysis purposes, during the contact with the officer that occurred inside the moving bus. She asserts that Meredith was seized by the officer only after Meredith had disembarked from the bus, but she does not provide analysis regarding that point.

Result: Reversal of Snohomish County District Court conviction of Zachery K. Meredith for making a false statement to a public servant. This result in the Supreme Court came through reversal of the ruling of Division One of the Court of Appeals that previously affirmed the Snohomish County Superior Court ruling that upheld the Snohomish County District Court conviction.

LEGAL UPDATE EDITOR'S COMMENT: It appears to me from the split of Opinions that Meredith does not squarely preclude law enforcement officers from acting in a fare enforcement capacity. But, as noted below in the monthly general boilerplate statements about the Legal Update, the Legal Update is published as a research source only and does not purport to furnish legal advice. Officers are urged to discuss issues with their agencies' legal advisors and their local prosecutors.

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BRIEF NOTES REGARDING MARCH 2023 UNPUBLISHED WASHINGTON COURT OF APPEALS OPINIONS ON SELECT LAW ENFORCEMENT ISSUES

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

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

The four entries below address the March 2023 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. Rickey Fievez v. DOC: On March 6, 2023, Division One of the COA *affirms a ruling of the Thurston County Superior Court that dismissed a negligence action against the Department of Corrections* for injuries to Rickey Fievez caused by an individual who had previously been on community custody supervision, but who was not on community supervision when he committed the acts that are the crux of Plaintiff's lawsuit. The Court of Appeals rules that the **Plaintiff has failed to demonstrate a material issue of fact as to any of the four necessary elements of a negligence lawsuit: Duty, Breach, Injury, and Proximate Cause.** The key facts of the case are summarized by the Court of Appeals as follows:

> Day's active community custody supervision ended on September 30, 2017, and was officially terminated on October 2, 2017. On June 17, 2018, Day stole his fiancée's revolver, shot open an ammunition case in a Walmart store, and attempted to carjack Rickey Fievez. Day shot Fievez through the neck causing tragic injuries rendering him quadriplegic. Shortly thereafter, Day was shot and killed by a bystander. Fievez and his children . . . sued DOC, arguing that DOC staff [members] had been negligent, and that DOC's negligence proximately caused Fievez's injury.

The Opinion in State v. Fievez can be accessed on the Internet at:
https://www.courts.wa.gov/opinions/pdf/842307.pdf

2. State v. Linden K. Thomas: On March 9, 2023, Division Three of the COA affirms the two Asotin County Superior Court convictions of defendant for *disseminating, from his home computer, child pornography to others.* Defendant's appeal raises a challenge to a search

warrant for his home that produced the evidence (along with his statements when confronted with the fruits of the search). He argues that the warrant fails constitutional particularity requirements. The Court of Appeals asserts that defendant misplaces his reliance on the factually distinguishable rulings in State v. Besola, 184 Wn.2d 605 (2015) and State v. McKee, 3 Wn. App. 2d 11 (2018).

In key part, the Opinion of the Court of Appeals summarizes the analysis as follows:

> A common sense reading of the search warrant for Linden Thomas' residence shows sufficient particularity. The warrant identifies the crimes by name and statute. The warrant described the particular evidence sought. It particularizes its search for "[a]ny digital or physical image or movie containing or displaying depictions of a minor engaged in sexually explicit conduct." The warrant includes statutory definitions from RCW 9.68A.011 to modify and describe the terms. The warrant does not simply list in its heading the alleged crimes. When using statutory terms, the warrant specifies a variety of electronic devices and media capable of containing evidence of the alleged crime. Any breadth of the list resulted from the circumstances and the nature of the activity under investigation. Linden Thomas does not suggest how the warrant could have read with more specificity. The warrant only authorized the search and seizure of items related to the commission of the suspected crimes.

The Opinion in State v. Thomas can be accessed on the Internet at:
https://www.courts.wa.gov/opinions/pdf/384624_unp.pdf

3. State v. Timothy Michael Foley: On March 21, 2023, Division Two of the COA affirms Kitsap County Superior Court convictions of defendant for *(A) seven counts of first degree possession of depictions of minors engaged in sexually explicit conduct, and (B) four counts of second degree possession of such depictions.* Defendant's appeal includes challenges to searches of his cell phone under search warrants.

A woman told police that her ex-fiancé, Timothy Michael Foley, was harassing her by phone and social media, including postings of sex videos of her. Based primarily on her allegations, police obtained a warrant to search Foley's cell phone for evidence of these activities. When executing the search warrant for the sex videos of the complainant, two officers also saw material that appeared to be depictions of minors engaged in sexually explicit conduct. Police then obtained a second search warrant for a further search of Foley's phone, and they seized evidence establishing that Foley had possessed such depictions.

Among the constitutional rulings in the case relating to the cell phone search warrants are: (A) that there was probable cause for the first warrant to search Foley's phone; (B) that the searches by the detectives under the first search warrant did not exceed the scope of the authorization in the first search warrant; (C) that, assuming for the sake of argument that the first search warrant was overbroad, any authorization in the warrant that is purportedly overbroad is severable; and (D) that defendant's challenge to the search under the second warrant is rejected under the following analysis:

> Foley contends that "the second warrant was tainted by the invalid first warrant." This argument fails.
>
> As discussed above, the first warrant is severable and police lawfully seized evidence based on the valid part of the warrant, so it did not taint the second warrant.

The second warrant affidavit established that the phone listed belonged to Foley based on the first warrant affidavit. The warrant particularly described the items to be searched by indicating that the images had to depict "minors engaged in sexually explicit conduct as defined in RCW 9.68A.070."

There was probable cause to believe such depictions would be found on the cell phone because officers had already found images that appeared to show minors engaged in sexually explicit conduct. This valid provision constituted the heart of the warrant.

Finally, while the record lacks details on the search following the second warrant, at trial, the State only relied on alleged depictions of minors engaged in sexually explicit conduct and technical information about Foley's cell phone. It did not rely on other content, such as notes, texts, e-mails, or innocuous images Foley had saved.

Because the first warrant did not taint the second warrant and because the second warrant lawfully authorized police to search Foley's phone for images depicting minors engaged in sexually explicit conduct, suppression of the evidence yielded from the second warrant is not required.

The Opinion in State v. Foley can be accessed on the Internet at:
https://www.courts.wa.gov/opinions/pdf/D2%2056498-0-II%20Unpublished%20Opinion.pdf

4. State v. Christopher Donald Petek: On March 30, 2023, Division Three of the COA reverses the Stevens County Superior Court convictions of defendant for *(A) first degree unlawful possession of a firearm, and (B) two counts of possession with intent to deliver an imitation controlled substance.* The Court of Appeals concludes that the trial court incorrectly ruled against defendant's suppression motion, and that the trial court should have ruled that the State failed to demonstrate a reasonable belief that, at the time of defendant's arrest on a DOC warrant, the RV that he exited to surrender to his arrest harbored an individual posing a danger to the arresting officers justifying a protective sweep of the RV.

The complicated facts related to the protective sweep issue are set forth in detail in the Division Three Opinion and are not excerpted or summarized here except to note as follows. The essential fact is that the officers heard noises coming from inside the RV, but, in the view of the Petek Court, they had no articulable objective indicator as to whether the noises were being produced by a dog that they knew to be inside the RV, or instead the noises were being produced by an unknown human being who posed a significant danger to the officers.

The ruling in this case is highly fact-based. Legal Update readers will want to read the Opinion in Petek and draw their own conclusions as to whether they believe that the circumstances meet the fact-based requirements/standard for a "protective sweep." The Petek Opinion correctly asserts that the standard requires that the State present articulable facts that, when considered together with rational inferences, would warrant a reasonably prudent officer in believing that the area to be swept harbors an individual posing a danger to those at the arrest scene.

The Opinion in State v. Petek can be accessed on the Internet at:
https://www.courts.wa.gov/opinions/pdf/382788_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 Nin th 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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