**LEGAL UPDATE FOR WASHINGTON LAW ENFORCEMENT**

**FEBRUARY 2016**

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This free guide that contains the Washington State Hospital Association’s recommendations to hospitals regarding their response to requests for information from law enforcement may be obtained by going to the home page of the website of the Washington State Hospital Association and searching under HIPAA.

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NEW ACCESS TO AND SEARCHING IN PUBLISHED WASHINGTON OPINIONS ON “WASHINGTON STATE JUDICIAL OPINIONS WEBSITE”

A new website – the Washington State Judicial Opinions Website – has been created to provide the public with free electronic access to, and a comprehensive search engine for, published opinions from the Washington State Supreme Court and Washington Court of Appeals. The website contains the text of the full set of published appellate opinions, dating back through territorial days. The opinions are available free of charge for personal, noncommercial use of the public. The new website’s address is: https://www.lexisnexis.com/clients/wareports/. Opinions are published on this website 60-90 days after slip opinions are filed. The opinions on this website are the officially edited opinions, which are first published approximately 60-90 days after the court issues its original, not-finally-edited slip opinions. To find the earlier-issued slip opinions that are accessible on the same day that the opinions are filed, go to http://www.courts.wa.gov/opinions

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BRIEF NOTE FROM THE UNITED STATES SUPREME COURT

BRADY VIOLATIONS IN LOUISIANA DEATH PENALTY CASE REQUIRE NEW TRIAL – In Wearry v. Cain, 136 S.Ct. 1002 (March 7, 2016) the United States Supreme Court summarily rules the the State of Louisiana violated defendant Wearry’s due process rights under Brady v. Maryland, 373 U.S. 83 (1963) by withholding evidence that could have affected the jury’s assessment of the credibility of witnesses implicating Wearry in a murder. The Supreme Court rules that Wearry is therefore entitled to a new trial.

Brady and subsequent Brady-based decisions hold that due process protections are violated and relief must be granted if (1) the government suppresses evidence, whether willfully or not; (2) the suppressed evidence is impeaching or exculpatory; and (3) the suppressed evidence is material. Materiality is determined by assessing whether the failure to disclose the evidence to the defendant undermines confidence in the outcome of the trial. The government “suppresses” evidence if, in general terms, the government (whether the prosecutor or another government actor, such as a law enforcement officer) knows of the evidence, and the defense does not know of the evidence.

The evidence withheld by the State of Louisiana involved: (1) statements of inmates that Scott, a crucial State’s witness regarding Wearry’s purported role in the crime, was trying to get the inmates to lie in support Scott’s version of the offense; (2) medical records regarding knee surgery of one of the other participants in the crime that undermined Scott’s credibility by raising doubts that the other participant in the alleged crime had the physical ability to do what key witness Scott claimed the other participant did; and (3) the fact that another of the State’s
witnesses had sought a deal to reduce his existing sentence in exchange for testifying against Wearry. Considering this evidence cumulatively, as is required under Brady analysis, the majority opinion concludes that the jury verdict of capital murder is undermined because there is a reasonable likelihood that the suppressed evidence could have affected the judgment of the jury.

Result: Reversal of Louisiana appellate court decision and remand to Louisiana state court system for new trial.

LEGAL UPDATE EDITORIAL NOTE: The Court makes this ruling without allowing full briefing and without hearing oral argument in the case. Six justices join in the summary majority opinion in this case. That opinion is per curiam, i.e., a summary opinion that does not attribute authorship to a particular Supreme Court justice. Justices Thomas and Alito join in a dissent that does not address the merits of the Brady argument but argues that the Court should have allowed argument on the issues in the case.

LEGAL UPDATE EDITORIAL NOTE REGARDING FEBRUARY 2016 LED ENTRY ON THIS DECISION: The Wearry decision is addressed in the AGO/CJTC’s February 2016 Law Enforcement Digest at pages 3-5.

NINTH CIRCUIT, UNITED STATES COURT OF APPEALS

PROBABLE CAUSE TO SEARCH AND STALENESS: DATA ON FACEBOOK ACCOUNT HELD NOT STALE DESPITE SUSPECT’S REQUEST TO HER COUSIN TO PURGE HER FACEBOOK ACCOUNT AND PASSAGE OF ALMOST FOUR MONTHS AFTER THAT BEFORE APPLICATION WAS MADE FOR THE SEARCH WARRANT

United States v. Flores, 802 F.3d 1028 (9th Cir., Sept. 23, 2015)

Facts and Proceedings below:

At a U.S.-Mexico border crossing, U.S. agents found 36 pounds of marijuana hidden in defendant’s car. Shortly after her arrest, in a recorded phone call from jail to her cousin, despite the jail’s warning that the call was being recorded, she instructed him to purge her Facebook account.

Federal agents used the recording and other evidence to obtain a warrant to search defendant’s Facebook account for evidence relating to a drug conspiracy and the importation of marijuana. For reasons that the Ninth Circuit opinion does not explain, there was a delay of almost four months between the time of the phone call and the government’s application for a search warrant. A federal judge issued the warrant.

Facebook complied with the warrant. Flores was charged with federal drug crimes. She filed a motion to suppress the incriminating evidence on grounds, among others, that the warrant was based on stale information. The motion was denied, and she was convicted.

ISSUE AND RULING: To establish that there is probability to search an item or area, it must be shown that there is a fair probability that the item sought is presently in a container or area to be searched. This means that the basis of information on which probable cause is based is
relatively not stale such that it is likely that conditions upon which a conclusion of probable cause to search can be made have not materially changed.

Was the information stale in this case where the Facebook warrant (1) was issued almost four months after the defendant had asked her cousin to purge her Facebook account, and (2) was based on information about her Facebook account relating to a point in time just before she made that request to her cousin?  (ANSWER BY NINTH CIRCUIT COURT OF APPEALS: No, the information was not stale)

Result:  Affirmance of U.S. District Court (Southern District of California) conviction of Citlalli Flores for importing marijuana.

ANALYSIS:  (Excerpted from Ninth Circuit opinion)

Probable cause is established if an affidavit presents a “fair probability” that evidence of criminal activity will be found in the place to be searched.  . . .

Special Agent Enriquez’ affidavit supporting the warrant established probable cause to search Flores’s Facebook account, at least for some period of time, considering Flores called Jose Manuel from jail and asked him to purge her account.  That request, along with Flores’s warning that the call was being recorded and the close proximity of the call to her arrest, supported more than a “fair probability” that agents would find evidence of drug smuggling or a smuggling conspiracy in Flores’s account.

Flores argues, however, that even if there was probable cause on June 21, 2012, after she called Manuel, there was no longer probable cause when the warrant issued more than three months later, on October 2, 2012.  . . . Contrary to Flores’s argument, there are many reasons to believe that there remained a “fair probability” of finding evidence of drug smuggling in her account when the warrant issued.

The mere passage “of substantial amounts of time is not controlling in a question of staleness.”  . . . That is particularly true with electronic evidence. “Thanks to the long memory of computers, any evidence of a crime was almost certainly still on [the defendant’s] computer, even if he had tried to delete the images.”  United States v. Gourde, 440 F.3d 1065, 1071 (9th Cir. 2006) (en banc) (emphasis added) May 06 LED:12.  Because any evidence that might have been in Flores’s account on June 21, 2012 may not have been deleted and likely could have been recovered even if it had been deleted, there remained a fair probability that Flores’s account would contain evidence of drug smuggling on October 2, 2012.

Flores counters by noting that the government sought to file the warrant under seal precisely because anyone with even basic computer skills could permanently delete Facebook content.  This argument disregards the fact that, on August 27, 2012, Special Agent Enriquez submitted a preservation request to Facebook for Flores’s account, which proved effective. [COURT’S FOOTNOTE: In addition to the preservation request and the inherent difficulty of irretrievably deleting digital data, a Facebook security setting also ensured that the contents of Flores’s account remained accessible.  Anyone logging in to Flores’s account from an unknown computer had to enter a password that was sent to Flores’s cell
phone. Flore's phone had been confiscated, so Manuel was unable to login to Flores's account.

Further, asserting that there is a genuine risk that evidence might be permanently deleted in the future, as Enriquez did in support of his request to seal the warrant, is not the same as conceding that there is no longer a fair probability that the evidence still exists (or is recoverable). Gourde . . . . Probable cause determinations are “commonsense, practical” questions, and a “fair probability” is less even than a preponderance of the evidence. In this day and age, even persons with minimal technological savvy are aware that data is frequently preserved and recovered after deletion from an electronic device, particularly when a third party like Facebook is involved. Gourde . . . . Therefore, even if agents were less likely to find evidence of drug smuggling in Flores's account in October than in June, a fair probability of finding such evidence remained when the warrant issued.

[Some citations omitted; others revised for style; one footnote omitted; one paragraph broken into two paragraphs for presentation; emphasis added in footnote.]

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BRIEF NOTE FROM THE WASHINGTON STATE SUPREME COURT

COUNTY (OR CITY) TORT LIABILITY FOR FAILURE TO MAINTAIN ROADWAY MAY BE LAWFULLY BASED ON FAILURE TO DEAL SAFELY WITH ROADSIDE VEGETATION – In Wuthrich v. King County, 185 Wn.2d 19 (Jan. 28, 2016), the Washington Supreme Court is unanimous in ruling that:

[a] municipality's duty to maintain its roadways in a reasonably safe condition for ordinary travel is not confined to the asphalt. If a wall of roadside vegetation makes the roadway unsafe by blocking a driver's view of oncoming traffic at an intersection, the municipality has a duty to take reasonable steps to address it.

This case rejects three prior Washington Supreme Court decisions on the grounds that those decisions were decided prior to the point at which the Legislature waived sovereign immunity.

Result: Reversal of unpublished Court of Appeals decision that affirmed a Pierce County Superior Court decision dismissing a lawsuit against King County.

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WASHINGTON STATE COURT OF APPEALS

EXIGENT CIRCUMSTANCES EXCEPTION TO SEARCH WARRANT REQUIREMENT AS INTERPRETED IN MISSOURI V. MCNEELY: RAPID RATE OF DISSIPATION OF THC IN BLOODSTREAM HELD NOT SUFFICIENT IN 2012 SEATTLE DUI INVESTIGATION TO JUSTIFY NOT APPLYING BY EMAIL OR PHONE FOR A SEARCH WARRANT AUTHORIZING A BLOOD TEST FOR THC

Facts:

Tamisha Pearson has health conditions that allow her to lawfully consume medicinal marijuana. On February 3, 2012, at 3:23 pm, Pearson struck a pedestrian with her car. Pearson pulled over and called 911. Seattle PD officers arrived at 4:06 pm. Pearson initially denied consuming any drugs or alcohol that day. She agreed to perform field sobriety tests. One of the officers, a drug recognition expert [DRE], later testified that Ms. Pearson failed most of the field sobriety tests that he administered (the Court of Appeals opinion describes FST performance testimony in detail).

The Court of Appeal opinion describes as follows what happened after that:

[The DRE officer] administered a breathalyzer test, which indicated no alcohol present. [LEGAL UPDATE EDITORIAL NOTE: I assume that the officer did this testing at the scene with a portable breath testing device.] [The officer] concluded some of Pearson’s behavior during the sobriety tests indicated she was impaired. Pearson told [the officer] that she is authorized to consume medicinal marijuana and that she had smoked earlier in the day. [The officer] arrested Pearson for suspicion of vehicular assault and driving under the influence.

[The officer] transported Pearson to Harborview Medical Center for a blood draw. They arrived at the hospital at approximately 5:26 pm - 2 hours after the initial collision and 1 hour and 20 minutes after [the officer] arrived on the scene. At approximately 5:50 pm, a nurse drew Pearson’s blood without her consent and without a warrant. A toxicologist analyzed Pearson’s blood sample for cannabinoids . . . The analysis determined Pearson’s THC concentration was approximately 20 nanograms.

Proceedings below:

The City of Seattle charged Pearson in Municipal Court with driving under the influence of an intoxicating drug. The Court of Appeals describes as follows what happened in a hearing on Pearson’s motion to suppress the blood evidence:

[T]he City introduced testimony from forensic toxicologist Naziha Nuwayhid of the Washington State Toxicology Laboratory. Nuwayhid testified that THC dissipates from blood very quickly. “[W]henever somebody smokes marijuana, the THC level [in their blood] reaches its peak before the end of smoking. And by three to five hours, the THC level is below the detection limit of the lab.” However, Nuwayhid also acknowledged that THC can be detected in the blood of a chronic user of marijuana for up to seven days, even if that user abstains from smoking marijuana.

The City also introduced testimony from [a Seattle PD officer].. [The officer] testified that obtaining a warrant for a blood test in a DUI scenario – usually done via e-mail – takes about an hour to an hour-and-a-half. [The officer] acknowledged that a telephonic warrant could be obtained. He did not specify how long that process took. After the evidentiary hearing, the court granted the City’s motion for reconsideration, finding that exigent circumstances existed justifying the warrantless blood test.
The Municipal Court jury convicted Pearson of DUI. The King County Superior Court affirmed the conviction.

ISSUE AND RULING: This DUI investigation in Seattle in 2012 under email and telephonic search warrant application procedures then available to Seattle officers. Officers contacted the suspect about 40 minutes after she was involved in an accident. Under these facts, did the additional fact of the rapid rate of dissipation of THC in the bloodstream provide exigent circumstances justifying taking blood and testing it without obtaining a search warrant? (ANSWER BY COURT OF APPEALS: No, rules a unanimous 3-judge panel)

Result: Reversal of DUI conviction of Tamisha Pearson; case remanded to Seattle Municipal Court for possible retrial.

ANALYSIS: (Excerpted from the Court of Appeals opinion)

The State’s intrusion into a person’s body to draw blood constitutes a search triggering [] constitutional protections. See Missouri v. McNeely, 133 S.Ct. 1552 (2013) June 13 LED:03 . . . Absent a recognized exception, a warrantless blood draw is unlawful. McNeely. One such exception allows a warrantless search if exigent circumstances exist. . . . The exception applies where “obtaining a warrant is not practical because the delay inherent in securing a warrant would compromise officer safety, facilitate escape or permit the destruction of evidence.” . . . The natural dissipation of an intoxicating substance in a suspect’s blood may be a factor in determining whether exigent circumstances justify a warrantless blood search. McNeely.

. . . .

In McNeely, the State acknowledged that the reasonableness of a warrantless search under the exigency exception must be evaluated based on the totality of the circumstances. The State maintained that a per se rule for blood testing in drunk driving cases is necessary because alcohol naturally dissipates. The State asserted that as a result, it is categorically reasonable for police officers to obtain a warrantless blood sample. The Court held that the natural dissipation of alcohol in the bloodstream is a relevant consideration in an exigent circumstances analysis, but it is not a per se exigent circumstance that justifies an exception to the Fourth Amendment’s warrant requirement for nonconsensual blood draws in drunk-driving cases. The Court noted that technological advances had expedited the warrant application process. Jurisdictions have developed streamlined means to shorten up the warrant process such as standard form warrants. But the Court also acknowledged that, in some cases, dissipation may nevertheless support an exigency. . . . For example, “exigent circumstances justifying a warrantless blood sample may arise in the regular course of law enforcement due to delays from the warrant application process.” .

Absent other extenuating circumstances, the natural dissipation of THC in a suspect’s bloodstream will constitute an exigency sufficient to forgo the warrant requirement only if the party seeking to introduce evidence of a warrantless blood test can show that waiting to obtain a warrant would result in losing evidence of the defendant’s intoxication. [LEGAL UPDATE EDITORIAL NOTE: At this point
the Court of Appeals discusses a Nevada appellate court decision rejecting an exigency argument under circumstances similar to those here.]

[The Nevada decision’s] analysis is persuasive, and consistent with Washington authority. See State v. Hinshaw, 149 Wn.App. 747 (2009) July 09 LED:20. In Hinshaw – decided before McNeely – officers entered the defendant’s home without a warrant because of concern over the dissipation of his blood-alcohol concentration. As in [the Nevada decision], the Hinshaw court concluded the State failed to show sufficient exigent circumstances because it failed to prove that a warrant could not be obtained before the evidence dissipated . . . .

Here, the City argues that seeking a warrant would have imposed an unreasonable delay in collecting the blood sample. The undisputed evidence shows the accident occurred at 3:23 pm, and [the DRE officer] arrived at 4:06 pm. Pearson told [the officer] that she smoked marijuana earlier in the day. He transported Pearson to the hospital at 4:57 pm. A nurse drew Pearson’s blood around 5:50 pm. [Another SPD officer] testified that obtaining a warrant usually takes between 60 to 90 minutes, but it can take longer. He also [testified that] under the best circumstances, it can take an hour. He described the availability of municipal court, district court, and superior court judges to review and sign warrants. He also explained warrants can be secured via telephone.

[The DRE officer] obtained a blood sample approximately 2.5 hours after the accident. Nuwayhid testified that “by three to five hours [after smoking marijuana], the THC level is below the detection limit of the lab.” Given this window, the City argues that evidence of THC could have dissipated completely by the time Pearson's blood was drawn had [the DRE officer] obtained a warrant.

The City failed to satisfy its heavy burden to show by clear and convincing evidence that a warrant could not have been obtained in a reasonable time. The City presented no evidence at the suppression hearing indicating why officers did not seek to obtain a warrant. Considering the totality of the circumstances, the record shows that obtaining a warrant would not have created a significant delay in collecting a blood sample.

Although both the City and the trial court relied heavily on the toxicologist’s testimony that THC concentration dissipates completely in three to five hours, the toxicologist qualified this opinion. The toxicologist acknowledged other factors could affect dissipation. Nuwayhid testified that it could take longer for THC to dissipate depending on the dose: “what is found in the blood . . . depends on the dose that the person smokes. So the larger the amount which is smoked or the more potent the joint or blend is, the longer it takes for the THC level to go beyond the detection limit.” The toxicologist also testified that she was aware of studies showing a test could detect THC in the blood of a chronic cannabis user even several days after that person smoked marijuana. In this case, the undisputed evidence shows that Pearson consumes cannabis medicinally to treat symptoms of chronic illness.

But even accepting the three to five hour dissipation window, the record shows that another officer could have transported Pearson to the hospital while [the DRE officer] obtained a warrant, thereby minimizing or eliminating any delay. In
McNeely, the Court observed that the presence of other officers weighs against the conclusion that exigent circumstances existed . . . .

Here, [the DRE officer] testified that besides himself, there were eight other officers at the scene of the accident. [The officer] transported Pearson from the scene at 4:57 pm to collect a blood sample, and a nurse drew Pearson’s blood nearly an hour later at 5:50 pm. [Another officer] testified that obtaining a warrant via e-mail typically took between 60 and 90 minutes. He also testified that a telephonic warrant was available. The accident happened on Friday afternoon, in Seattle on Rainier Avenue in a commercial area on a heavily travelled road. Under these circumstances, another officer could have transported Pearson to the hospital to collect a blood sample while [the DRE officer] obtained a warrant. The delay – if any – would have been minimal. Given the City’00s heavy burden to justify the warrantless search, the City has failed to show that “the warrant process [would] significantly increase the delay before the blood test [was] conducted.” McNeely, 133 S.Ct. at 1561.

[Some citations omitted; other citations revised for style]

LEGAL UPDATE EDITORIAL NOTE REGARDING FEBRUARY 2016 LED ENTRY ON THIS DECISION: The Pearson decision is addressed in the AGO/CJTC’s February 2016 Law Enforcement Digest at pages 6-8.

SUFFICIENCY OF EVIDENCE OF ROBBERY: EVIDENCE SUFFICIENT TO CONVICT OF ROBBERY BASED ON FORCIBLY TAKING PROPERTY IN THE PRESENCE OF A PERSON (IN THIS CASE, USING FORCE TO RESIST THE EFFORTS OF A NOT-YET-ON-DUTY STORE EMPLOYEE TO PREVENT THEFT OF GOODS); EVIDENCE SATISFIES STATUTE’S IMPLIED ELEMENT THAT REQUIRES THAT THE VICTIM HAVE AN OWNERSHIP INTEREST IN, A REPRESENTATIVE INTEREST IN, OR POSSESSION OF, THE PROPERTY FORCIBLY TAKEN


Facts and Proceedings below: (Excerpted from Court of Appeals opinion)

On September 22, 2013, Richie asked James Beeson to drive him to Walgreens so he could purchase some items. As Beeson was parking, Kersten Gouveia was arriving for her graveyard shift as sales associate. Beeson backed into a parking spot near the entrance, which made Gouveia suspicious of the car.

Although Gouveia was a Walgreens employee, she was not yet on duty and was wearing a coat over her Walgreens badge and shirt. She picked up a beverage to drink before her shift started and proceeded to the front register to pay. While she was at the register, Gouveia watched Richie enter and head to the liquor section. She told the employee at the cash register, Leslie Hammitt, to call a code used to alert employees of a possible theft.

Richie removed two bottles of brandy from the shelf and walked toward the front of the store, holding one bottle by the neck in each hand. As Richie approached, Gouveia took a few steps back from the checkout counter. Richie walked between the checkout counter and Gouveia. Gouveia said to Richie, “[S]ir, you
need to pay for that here. Let me help you.” She later testified that she was “giving him good customer service” and trying to help him with the bottles. When Gouveia reached to help, Richie hit her in the head with one of the bottles. Gouveia then grabbed for the other bottle, and Richie ran out of the front door dragging Gouveia, who was still holding onto the bottle in Richie’s hand. Richie eventually broke away from Gouveia and drove off in Beeson’s car.

Proceedings below: Richie was convicted of first degree robbery.

ISSUE AND RULING: One variation of robbery under RCW 9A.56.190 prohibits forcibly taking property “in [the] presence” of a person.” Washington case law reads into this statutory language a requirement that the robbery victim have an ownership interest in, a representative interest in, or possession of, the property forcibly taken in his or her presence. Defendant used force against a not-yet-on-duty store employee when that employee tried to prevent defendant from stealing goods from the store. Is the evidence in the record sufficient to support defendant’s conviction of first degree robbery under RCW 9A.56.190 for forcibly taking an item in the presence of a person having a representative interest in the item stolen? (ANSWER BY COURT OF APPEALS: Yes, rules a unanimous 3-judge panel)

Result: Reversal (for instructional error not addressed in this Legal Update entry) of Pierce County Superior Court conviction of Michael William Richie for first degree robbery; case remanded for retrial.

ANALYSIS:

RCW 9A.56.190 defines robbery as follows:

A person commits robbery when he or she unlawfully takes personal property from the person of another or in his or her presence against his or her will by the use or threatened use of immediate force, violence, or fear of injury to that person or his or her property or the person or property of anyone. Such force or fear must be used to obtain or retain possession of the property, or to prevent or overcome resistance to the taking; in either of which cases the degree of force is immaterial.

[Emphasis added]

With regard to taking property from a person’s presence, the language of the statute does not expressly require that the person have an ownership, representative, or possessory interest in the property. The Court explains, however, that Washington case law has established that there is an implied element in the crime of robbery where they charge is based on forcibly taking property from a person’s presence. Under that case law, the person against whom force is used must have an ownership interest in, a representative interest in, or possession of, the property forcibly taken. The Court holds that this implied element is supported by the evidence in this case.

The key part of the Court’s analysis is as follows:

Here, the State presented evidence that Gouveia was a Walgreens employee. The evidence also showed that Gouveia was acting in her capacity as a Walgreens employee when she tried to stop the theft. She testified that she tried
to find the manager when she first arrived to alert him to Richie’s suspicious activity. She then instructed the cashier to alert the other employees of a possible theft. And Gouveia testified that she was attempting to give customer service when she grabbed for the bottles.

Finally, the evidence showed that Walgreens believed that Gouveia was acting in her capacity as an employee. Walgreens fired Gouveia after this incident because she violated company policy that prohibited employees from attempting to stop shoplifters.

Richie argues that Gouveia was not acting in a representative capacity because she was not on duty at the time of the incident, her Walgreens shirt and identification were not visible, and she was standing in line like any other customer. However, a rational jury could have found that regardless of whether Gouveia was on duty, she was acting in her employer’s interests at the time of the robbery. And the cases do not require that the defendant actually know that the victim is acting in a representative capacity at the time of the robbery.

SUFFICIENCY OF EVIDENCE OF ROBBERY: DIVISION ONE DISAGREES WITH DIVISION TWO’S FARNSWORTH DECISION ON SUFFICIENCY OF EVIDENCE FOR ROBBERY CONVICTION WHERE PERPETRATOR DEMANDS MONEY BUT DOES NOT EXPRESSLY THREATEN OR MAKE REFERENCE TO A WEAPON

State v. Clark, 190 Wn. App 736 (Div. I, October 26, 2015)

In State v. Clark, a 3-judge panel of Division One of the Court of Appeals is unanimous in disagreeing with the analysis of Division Two of the Court of Appeals in a 2014 decision that is now on review in the Washington Supreme Court. In State v. Farnsworth, 184 Wn. App. 305 (Div. II, 2014) April 05 LED:05 (review pending in Washington Supreme Court), Division Two ruled that evidence of use of force or threat in a robbery case was insufficient to convict where an accomplice of the defendant getaway driver entered a bank wearing a wig and sunglasses, and approached a teller at the counter and handed her a note stating, “No die [sic] packs, no tracking devices, put the money in the bag.” In both Farnsworth and Clark, there was no evidence that the accomplice in the bank had a weapon or made any reference to a weapon.

The Clark Court analyzes similar facts to those in Farnsworth, but the Clark Court reaches a different conclusion under the following analysis:

Clark [the getaway driver] asserts insufficient evidence supports finding Reynolds [the principal who went in the bank] used or threatened to use force, violence, or the fear of injury to support the conviction of robbery in the first degree of the Banner Bank because there was no evidence he carried a weapon. We disagree, and hold that under the circumstances, a rational jury could reasonably conclude that Reynolds made an unequivocal demand “menace, word or gesture as in common experience . . . likely to create an apprehension of danger” for the immediate surrender of the bank’s money unsupported by any pretext of lawful entitlement . . . .

Reynolds entered the Banner Bank in Bellevue at 5:58 p.m. right before closing wearing black pants, a black hat, black gloves, a black mask, and carrying a black bag. Customer service manager Nicolene Buchanan testified that she
immediately pushed the silent alarm as Reynolds approached the teller station. Teller Jillian Clark testified that when she saw Reynolds enter the bank in “a full ski mask,” she “immediately started shaking,” turned to the teller next to her and said, “[O]h, my God, we’re getting robbed,” and pushed the silent alarm. Personal banker Brenda Curtis testified it was “very clear” Reynolds was “trying to rob the bank” and he did not “want the police there” or “want you to set off alarms.” Curtis said it was “scary because you don’t know at that point how far it could go.” When he “saw what was happening,” branch manager Sean Haugh immediately dialed 911 from his office.

Reynolds “command[ed]” Jillian and Buchanan not to push any alarm buttons and “said it loud enough for everybody to hear, don’t press any buttons.” When Jillian did not respond, Reynolds repeated his demand. Reynolds gave Jillian a note stating, “No dye packs or transmitter.” Reynolds “command[ed]” Jillian to not put any dye packs in with the money. After Jillian gave Reynolds small bills, Reynolds “demanded more money.” Jillian testified she followed bank policy by handing over the money but “was very scared, I was shaking. I could hardly open my [drawer] or do anything.” Haugh testified Jillian and Buchanan “were both visibly shaking.”

Viewing the evidence in the light most favorable to the State, the jury could find Reynolds obtained the money from the Banner Bank teller by the use of force, violence, or the fear of injury.

In a supplemental assignment of error, Clark relies on State v. Farnsworth, 184 Wn. App. 305 (Div. II, 2014) to argue that insufficient evidence supports finding Clark acted as an accomplice because the State did not prove Reynolds made an implied threat to use force, violence, or fear of injury to obtain money from the financial institutions. We disagree with the analysis in Farnsworth.

In Farnsworth, the court held insufficient evidence supported finding an implied threat to obtain money from the bank teller. The court vacated the robbery conviction of the accomplice and remanded for sentencing on theft in the first degree. The court in Farnsworth concluded that because there was no evidence of a weapon and the principal “did not insinuate that he would take further action if the teller did not comply with the note's instructions,” “simply hand[ing] over a note instructing the teller to “put the money in the bag” does not prove an implied threat to commit robbery in the first degree.

The dissent disagreed with holding “as a matter of law, a person does not commit a robbery” by handing a bank teller a note demanding money “to which he has no conceivable claim.” We agree with the dissent.

The decision in Farnsworth ignores the standard of review for sufficiency of the evidence. The test to assess the sufficiency of the evidence is “whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact” could have found the essential elements of the crime beyond a reasonable doubt. We agree with the dissent that “a rational trier of fact
could reasonably infer” that a “naked demand” to the bank teller for money “unsupported by any claim of right” and the defendant's conduct “implied a threat.” . . . The principal McFarland entered the bank wearing a wig and “dark sunglasses” and “acting all fidgety.” . . . When he approached the teller station, McFarland “kept his arms crossed” and “leaned over the counter” toward the teller. The teller testified she complied with the demand for money because “she didn't want anybody else to get harmed” and “didn't know what he was capable of doing.”

Further, contrary to the assertion of the majority in Farnsworth. obtaining money from a bank by “wearing a disguise and handing a bank teller a note demanding the unconditional surrender of money to which he has no conceivable claim does not blur the distinction between robbery in the first degree and theft in the first degree.

The authority to define a criminal offense rests squarely with the legislature. The legislature defines the crime of theft in the first degree as the taking of property “from the person of another.” RCW 9A.56.030(1)(b). By contrast, the legislature defines robbery in the first degree when a person “commits a robbery within and against a financial institution,” RCW 9A.56.200(1)(b), “by the use or threatened use of immediate force, violence, or fear of injury,” RCW 9A.56.190. The plain language of the statute defining robbery shows the legislature was concerned with the risks that the threat to use force, violence, and injury entail and the nature of the defendant's conduct. . . .

[Footnotes and some case citations omitted]

**Result:** Affirmance of King County Superior Court convictions of Nathaniel Shane Clark for single counts of attempted first degree robbery, robbery in the first degree, attempt to elude a pursuing police vehicle, and felony hit and run.

**Status of Clark:** Defendant’s petition for discretionary review is pending in the Washington Supreme Court.

**CYBERSTALKING AND FREE SPEECH PROTECTION: JUVENILE'S CYBERSTALKING ADJUDICATION IS REVERSED BECAUSE, WHILE THE JUVENILE'S TWEETS WERE CLEARLY “MEAN-SPIRITED,” THE TWEETS FAIL TO MEET “TRUE THREAT” REQUIREMENT OF CONSTITUTIONAL FREE SPEECH PROTECTIONS WHEN THE TWEETS ARE ASSESSED IN LIGHT OF FULL CONTEXT OF ADOLESCENT TWEETING**


**Facts and Proceedings below:**

When J.K. [defendant Jessica Kohonen] was in eighth grade, a classmate, S.G., informed a teacher that another student was behaving oddly. As a result, the other student and J.K. were both suspended from school. J.K. and S.G. had no other interaction until the incident at the center of this case.

Two years later, when J.K. and S.G. were sophomores in high school, they shared a first period class. One morning, J.K. saw S.G. in class and was
reminded of the incident two years before. She quickly posted two short messages, known as tweets, via the web site Twitter. The first read, “Tbh [To be honest] I still want to punch you in the throat even tho it was 2 years ago.” The second read, “#[S.G.] must die.”

J.K. later explained that she posted tweets frequently. She used Twitter as a “virtual diary,” posting her thoughts, reactions, feelings, and more. She testified that she sent the messages quickly and without thinking, as a fleeting expression of her agitation at the memory from middle school. Although she was aware that the posts were public, and that she had approximately 100 people who followed her, she testified that she did not consider the potential impact her tweets might have on S.G.

After school that day, J.K. and a friend, J.G., were walking through the school and saw “a bunch of red paint” spilled on the ground. J.G. joked to J.K. that it looked as if someone had been murdered. J.K. responded by tweeting the word “murder.”

For nearly a full day after these tweets, there was no reaction. None of J.K.’s Twitter followers mentioned them to her or, to her knowledge, responded to them in any way. S.G. was unaware of the tweets. The next day, however, another student, I.R., who follows J.K. on Twitter, noticed the tweets and showed them to S.G.

I.R. later explained that the only reason she became aware of J.K.’s tweets was that she followed J.K. on Twitter, which meant that anything that J.K. posted automatically appeared on I.R.’s Twitter page. I.R. also explained that, because J.K.’s Twitter account was public, anyone who searched for her page could see the things that she had posted that were not specifically blocked.

S.G. testified that she felt angry and embarrassed upon learning of the tweets because she knew that others would see them. She was not frightened, though, because she did not think that J.K. would actually hurt her. Nevertheless, S.G. decided to bring the tweets to the attention of school administrators. She first showed them to Nicole Lockhart, the dean of students, whom she encountered on the way into the administration building. Lockhart consulted with other administrators before summoning the school resources officer, Officer George Brown of the Bellingham Police Department.

Lockhart and Brown reviewed the tweets together with S.G. and her mother, whom S.G. had called soon after seeing the tweets. Despite the significant time difference between the tweets about S.G. from the prior morning and the “murder” tweet from the prior afternoon, because they appeared in sequence on J.K.’s Twitter page [tweets appear on the author’s Twitter page in reverse chronological order], the group treated the tweets as if all three were related.

J.K. was taken from class to the administration office, where Lockhart and Brown confronted her with the tweets. J.K. immediately admitted that she had written and posted the tweets but stated that she had not intended for her actions to harm S.G. J.K. also explained that the “murder” tweet was unrelated to the other two.
J.K. was charged with one count of cyberstalking. After trial, the commissioner adjudicated J.K. guilty as charged, finding that J.K. had acted with the intent to embarrass, harass, and torment S.G. and that she was not credible on the question of whether she had considered the effect the tweets could have before posting them. The court also concluded that the tweets constituted a true threat. J.K. was sentenced to six months of probation and 30 hours of community service.

The superior court denied J.K.’s motion to revise [the Commissioner’s decision].

ISSUE AND RULING: Under constitutional free speech protections, to convict a defendant of cyberstalking, the defendant have uttered a "true threat." That is a statement made under circumstances where a reasonable person would foresee that the statement would be interpreted as a serious expression of intention to inflict bodily harm upon or to take the life of another person.

The author of the alleged threats in this case was J.K., an adolescent high school student. The intended audience was J.K.’s peer group of adolescent Twitter followers. The alleged threats were disseminated via Twitter. J.K. and her peers used Twitter to tweet their feelings, things that are going on, funny pictures, just pictures in general and to post their thoughts, their reactions to things, their feelings, things that happen to them on a daily basis, and inside jokes with friends. Testimony from the target of the tweets and from other members of J.K.’s peer group did not support a finding that the tweets reasonably would have caused the target of the tweets to fear for her safety.

In light of this evidence, is there substantial evidence that the tweets by J.K. were “true threats" under constitutional protections? (ANSWER BY COURT OF APPEALS: No, rules a unanimous 3-judge panel)

Result: Reversal of Whatcom County Juvenile Court adjudication of guilt of cyberstalking; case remanded to Superior Court for dismissal of charge with prejudice.

ANALYSIS:

The First Amendment right to free speech does not permit government to criminalize threatening language that is not a “true threat.” A "true threat" is a statement made under circumstances where a reasonable person would foresee that the statement would be interpreted as a serious expression of intention to inflict bodily harm upon or to take the life of another person. This objective standard focuses on the speaker, who need not actually intend to carry out the threat. It is enough that a reasonable speaker would foresee that the threat would be considered serious, not words said merely in jest, idle talk, or political argument. Aan indirect threat (words conveyed to a third party, rather than the subject of the threatening language) may constitute a true threat.

J.K. was charged with misdemeanor cyberstalking of S.G. contrary to RCW 9.61.260, which provides, in pertinent part:
A person is guilty of cyberstalking if he or she, with intent to harass, intimidate, torment, or embarrass any other person, makes an electronic communication to such other person or a third party: (c) Threatening to inflict injury on the person or property of the person called or any member of his or her family or household.

The Court of Appeals agrees with J.K.’s argument that insufficient evidence was presented to support a finding that her tweets constituted “true threats.” In key part, the Court’s analysis is as follows:

[I]n true threat cases, it is not just the words and phrasing of the alleged threat that matter, but also the larger context in which the words were uttered, including the identity of the speaker, the composition of the audience, the medium used to communicate the alleged threat, and the greater environment in which the alleged threat was made. Herein, the combined high school and social media context in which the alleged threats were made further supports the conclusion that J.K.’s tweets did not constitute true threats.

The author of the alleged threats was J.K., an adolescent high school student. The intended audience was J.K.’s Twitter followers, approximately 100 of her friends and acquaintances – in short, members of her peer group. The alleged threats were disseminated via Twitter, a popular social media platform. Testimony established that J.K. and her peers used Twitter to “tweet their feelings, things that are going on, funny pictures, just pictures in general” and to “post [their] thoughts, [their] reactions to things, [their] feelings, things that happen to [them] on a daily basis[, and] inside jokes with friends.”

The commissioner heard testimony regarding the actual reactions of three members of the intended audience – S.G., I.R., and an unidentified student at the same high school. These reactions provide a guide for that which constituted a reasonable reaction under the circumstances and, therefore, for what reaction a reasonable speaker under the circumstances would have foreseen. See [State v. Kilburn, 151 Wn.2d 36, 45 n.3 (2004) Oct 04 LED:05 (“[i]n the vast majority of the cases . . . a reasonably foreseeable response from the listener and an actual reasonable response should be the same. The only case where there might be a different outcome is where the recipient suffers from some unique sensitivity unknown to the speaker.” (citing Doe v. Pulaski County Special Sch. Dist. 306 F.3d 616, 623 (8th Cir. 2002))).

The commissioner first heard about I.R.’s reaction to the tweets. I.R. testified that, when she saw the tweet that included S.G.’s name, she found it “suspicious,” because she did not know that the two girls knew each other. She also testified that she allowed S.G. to bring her cellular telephone to the school administration office because “[i]t was a serious situation for [S.G.].” (Emphasis added.) I.R. was never asked whether she perceived the tweets to be serious threats to harm S.G. Nevertheless, based on the foregoing testimony, the State asks us to infer that I.R. so perceived the tweets. However, the strongest inference from the totality of I.R.’s testimony is to the contrary. I.R. also testified that she did not realize “to what extent” S.G. would involve the school administration or that S.G. would involve her mother “or anything like that” at all. If I.R. had taken J.K.’s tweets as a serious death threat, she certainly would not
have been surprised by the manner in which S.G. involved both the school administration and her mother.

The commissioner next heard from S.G. who recounted not only her own response, but also the overheard response of another student. According to S.G., she heard another student at school talking about “how funny” the tweets were. Regarding her own response, S.G. repeatedly recalled feeling “upset,” “angry,” and “embarrassed” upon learning of the tweets. By contrast, S.G. repeatedly denied that she felt scared or afraid as a result of the tweets. Consistent with her stated lack of fear, after leaving the school administration building, S.G. returned directly to class. Thus, even S.G., who did not know J.K. well and who knew that J.K. might resent her because of the incident two years earlier, did not view these tweets as expressing an actual intent to cause physical harm. Indeed, not one of the people in J.K.’s intended audience who testified perceived the tweets to be serious threats.

It is clear that both Lockhart and Brown – neither of whom was a member of J.K.’s intended audience – took the tweets seriously. However, it is not clear that the reason either adult took them seriously was because they perceived them to be true threats. Indeed, neither Brown nor Lockhart was asked at trial whether he or she perceived the tweets to be serious threats to inflict harm on S.G. There is reason to believe that Lockhart, at least, would have taken them seriously even if she did not believe them to be true threats because –true threats or not –they were affecting the high school dynamic. Furthermore, Brown testified that he was “particularly” interested in the “murder” tweet, which, as the commissioner found, was not at all related to the other two. Finally, both individuals testified that they were unfamiliar with Twitter. In fact, both stated that the underlying incident was the first time that Twitter had been at the center of an investigation in which they were involved.

J.K.’s tweets bear the signs of – admittedly mean-spirited – hyperbolic expressions of frustration, and that is precisely how they were received. A reasonable person in J.K.’s position would not have anticipated a different reception. Therefore, insufficient evidence was presented that the tweets constituted true threats. Because Lockhart and Brown were not part of J.K.’s peer group and were unfamiliar with Twitter, their reactions to J.K.’s tweets are a poor measure of the reaction that a reasonable person in J.K.’s position would have anticipated from her peers.

[Footnotes, some citations omitted; other citations revised for style]

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**BRIEF NOTES FROM THE WASHINGTON STATE COURT OF APPEALS**

(1) **FRYE TEST FOR ADMITTING SCIENTIFIC EVIDENCE: MEDICAL SCIENCE’S PREVAILING VIEWS HAVE CHANGED REGARDING CERTAINTY OF DIAGNOSIS OF SHAKEN BABY SYNDROME, SO NEW TRIAL IS REQUIRED IN ORDER TO ALLOW DEFENDANT TO PRESENT EXPERT TESTIMONY IN THIS REGARD** – In the Matter of the Personal Restraint Petition of Heidi Charlene Fero, ___ Wn. App. ___, 2016 WL ___ (Div. II, Jan. 5, 2016), Division Two of the Court of Appeals sets aside the defendant’s conviction and
remands her case for a new trial in an opinion that the opinion for the unanimous 3-judge panel briefly summarizes as follows:

Heidi Charlene Fero was convicted of first degree assault of a child in 2003 for the injuries suffered by [15-month-old] Brynn Ackley. The evidence that linked Fero to Brynn’s injuries was that (1) Brynn had fallen unconscious while under Fero’s care and had presented at the hospital with subdural hemorrhaging (brain bruising or bleeding), cerebral edema (brain swelling), and retinal hemorrhaging (retina bruising or bleeding); and (2) all of the doctors who testified on the topic stated that children suffering those injuries become unconscious almost immediately and those injuries can only be caused by car accidents, long falls, or abuse by an adult. Fero now brings this personal restraint petition (PRP) asserting new material facts exist in the form of the now generally accepted medical paradigm that recognizes children can remain lucid for up to three days after suffering similar head injuries, and those injuries are now known to be caused by much less extreme circumstances.

We agree that Fero has presented sufficient new material facts to warrant relief because the uncontested declarations of the medical experts she provided establish that the result of her trial would probably be different if the current generally accepted medical evidence was available at the time of her trial in 2003. Accordingly, we grant Fero’s petition and remand for a new trial.

Result: Personal Restraint Petition of Heidi Charlene Fero is granted. Her 2003 Clark County Superior Court conviction for first degree assault of a child is set aside, and her case is remanded for a new trial.

(2) FRYE TEST FOR ADMITTING SCIENTIFIC EVIDENCE: FINGERPRINT EXPERT’S TESTIMONY ADMITTED OVER CHALLENGE BASED ON FRYE v. UNITED STATES AND ON 2009 REPORT OF NATIONAL ACADEMY OF SCIENCES – In State v. Lizarraga, 191 Wn. App. 530 (Div. I, Dec. 1, 2015), Division One of the Court of Appeals rejects the argument of a defendant being tried for murder and other crimes that a standard latent fingerprint identification technique has been discredited by a relatively recent scientific report.

A King County Sheriff’s Office latent fingerprint examiner testified in Lizarraga’s murder trial about her comparison, using the ACE-V technique, of Lizarraga’s fingerprints to the latent prints obtained from a chair and a coin jar at a house from which the alleged murder weapon was allegedly stolen. The expert testified that Lizarraga’s fingerprints matched the prints on the chair and coin jar. The opinion for the unanimous 3-judge panel rejects his challenge to her testimony under the following analysis:

Under [Frye v. United States, 293 F. 1013 (1923)], “evidence deriving from a scientific theory or principle is admissible only if that theory or principle has achieved general acceptance in the relevant scientific community.” . . . Evidence involving new methods of proof or new scientific principles is subject to a Frye hearing. . . However, after general acceptance of a methodology in the scientific community, application of the methodology to a particular case is a matter of weight and admissibility under [Evidence Rule] 702. . . . [LEGAL UPDATE EDITORIAL NOTE: The case law under Frye recognizes that science evolves and evidence that once met the standard under Frye may
still be challenged if the science is no longer accepted in the relevant scientific community.]

[At the trial court level] Lizarraga requested a Frye hearing on the ACE-V technique of fingerprint comparison. Citing a 2009 report by the National Research Council of the National Academy of Sciences (NAS Report), the defense argued latent fingerprint identification is no longer generally accepted in the scientific community.

The trial court denied the motion for a Frye hearing and to limit expert testimony.

. . .

This court recently considered and rejected the same argument in State v. Pigott, 181 Wn. App. 247, 251 (2014). We adhere to our decision in Pigott. [LEGAL UPDATE EDITORIAL NOTE: A Court of Appeals footnote here cites three decisions from other jurisdictions likewise concluding that the NAS Report is insufficient to warrant changes in the status of latent fingerprint evidence under the Frye test.] Here, as in Pigott, the expert witnesses used the generally accepted ACE-V technique to analyze the fingerprint evidence.

[Some citations omitted; other citations revised for style]

Result: Affirmance of King County Super Court convictions of Jorge Luis Lizarraga for second degree murder, unlawful possession of a firearm (two counts), residential burglary, theft of a firearm, and possession of a stolen firearm,

LEGAL UPDATE EDITORIAL NOTE: On procedural grounds, the Court of Appeals also rejects Lizarraga’s challenge to the trial court’s admission of expert testimony about ballistics in his case.

(3) IMPLIED CONSENT WARNINGS: OFFICER’S OMISSION OF LANGUAGE ABOUT TESTING FOR MARIJUANA THAT WAS REQUIRED UNDER A FORMER VERSION OF RCW 46.20.308 REQUIRES SUPPRESSION OF BREATH TEST RESULT – In State v. Robison, ___ Wn. App. ___, 2016 WL 664111 (Div. I, Feb. 16, 2016), Division One of the Court of Appeals agrees with a DUI defendant that breath test results must be suppressed where he was not given the full implied consent warnings under the version of RCW 46.20.308 that was in effect when he was arrested for DUI on June 29, 2013.

In the introductory paragraph of its opinion, the unanimous 3-judge panel summarizes the ruling as follows:

Before an officer gives a breath test to a person reasonably believed to be driving under the influence, an officer must provide that driver with certain warnings required by statute. Here, the State asks this court to reverse a superior court decision suppressing breath test results because the officer omitted the statutorily required warnings about marijuana. The State contends that a defendant must show prejudice before a court can suppress breath test results because of incomplete warnings. Thus, because the breath test administered to Darren J. Robison could not measure the active ingredient in marijuana, tetrahydrocannabinol (THC), the State claims that he cannot show that the
officer’s omission prejudiced him. Because the applicable statute required the marijuana warning and Robison was not required to show prejudice caused by its omission, we affirm the superior court.

The Court notes as follows that the implied consent statute was amended in 2012 to insert the language at issue in the Robison case, but that the statute has since been amended:

On November 6, 2012, Washington voters enacted Initiative 502, legalizing some uses of marijuana. This initiative also amended the test result warning in former RCW 46.20.308(2) by adding a warning about marijuana test results [this was the warning requirement at the time of the arrest of Mr. Robison]:

The officer shall warn the driver, in substantially the following language, that:

(c) If the driver submits to the test and the test is administered, the driver's license, permit, or privilege to drive will be suspended, revoked, or denied for at least ninety days if: (i) The driver is age twenty-one or over and the test indicates either that the alcohol concentration of the driver's breath or blood is 0.08 or more or that the THC concentration of the driver's blood is 5.00 or more.

The legislature again amended RCW 46.20.308, effective September 28, 2013, to omit the language “or blood” from the quoted section as well as other references to implied consent for a blood test. Later, the legislature again amended this statute, effective September 26, 2015, to eliminate a driver’s implied consent to a test for THC or any other drug and the warning language at issue in this case, “or that the THC concentration of the driver's blood is 5.00 or more.”

The lesson of the Robison case is that, as a general rule, all of the statutory warning language should be read.

Result: Affirmance of suppression ruling of Snohomish County Superior Court in DUI prosecution of Darren J. Robison; remand to Superior Court for possible retrial.

LEGAL UPDATE EDITORIAL NOTE REGARDING FEBRUARY 2016 LED ENTRY ON THIS DECISION: The Robison decision is addressed in the AGO/CJTC’s February 2016 Law Enforcement Digest at pages 3-4.

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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 will be 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 current and 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 past LED treatment of these core-area cases; 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. 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. Mr. Wasberg's email address is jrwasberg@comcast.net. His cell phone number is (206) 434-0200. The initial monthly Legal Update was issued for January 2015. Mr. Wasberg will electronically provide back issues on request.

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INTERNET ACCESS TO COURT RULES & DECISIONS, RCWS AND WAC RULES

The Washington Office of the Administrator for the Courts maintains a website with appellate court information, including recent court opinions by the Court of Appeals and State Supreme Court. The address is [http://www.courts.wa.gov/]. Decisions issued in the preceding 90 days may be accessed by entering search terms, and decisions issued in the preceding 14 days may be more simply accessed through a separate link clearly designated. A website at [http://legalwa.org/] includes all Washington Court of Appeals opinions, as well as Washington State Supreme Court opinions. The site also includes links to the full text of the RCW, WAC, and many Washington city and county municipal codes (the site is accessible directly at the address above or via a link on the Washington Courts’ website). Washington Rules of Court (including rules for appellate courts, superior courts, and courts of limited jurisdiction) are accessible via links on the Courts’ website or by going directly to [http://www.courts.wa.gov/court_rules].

Many United States Supreme Court opinions can be accessed at [http://supct.law.cornell.edu/supct/index.html]. This website contains all U.S. Supreme Court opinions issued since 1990 and many significant opinions of the Court issued before 1990. Another website for U.S. Supreme Court opinions is the Court’s own website at [http://www.supremecourt.gov/opinions/opinions.html]. Decisions of the Ninth Circuit of the U.S. Court of Appeals since September 2000 can be accessed (by date of decision or by other search mechanism) by going to the Ninth Circuit home page at [http://www.ca9.uscourts.gov/] and clicking on “Opinions.” Opinions from other U.S. circuit courts can be accessed by substituting the circuit number for “9” in this address to go to the home pages of the other circuit courts. Federal statutes are at [http://www.law.cornell.edu/uscode/].

Access to relatively current Washington state agency administrative rules (including DOL rules in Title 308 WAC, WSP equipment rules at Title 204 WAC, and State Toxicologist rules at WAC
448-15), as well as all RCW’s, is at [http://www.leg.wa.gov/legislature]. Information about bills filed since 1991 in the Washington Legislature is at the same address. Click on “Washington State Legislature,” “bill info,” “house bill information/senate bill information,” and use bill numbers to access information. Access to the “Washington State Register” for the most recent proposed WAC amendments is at this address too. In addition, a wide range of state government information can be accessed at [http://access.wa.gov]. The internet address for the Criminal Justice Training Commission (CJTC) Law Enforcement Digest (LED) is [https://fortress.wa.gov/cjtc/www/led/ledpage.html].

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