LEGAL UPDATE FOR WASHINGTON LAW ENFORCEMENT

Law Enforcement Officers: Thank you!

MARCH 2019

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FOR MURDER: NINTH CIRCUIT PANEL RULES THAT AFFIDAVIT FOR CSLI INFORMATION FOR SUSPECT'S PHONE FAILS TO ESTABLISH PROBABLE CAUSE WHERE AFFIDAVIT RELIES PRIMARILY ON A FAMILY MOTIVE TO KILL A PIMP BOYFRIEND OF A FEMALE MINOR FAMILY MEMBER; BUT FOURTH AMENDMENT GOOD FAITH EXCEPTION TO EXCLUSIONARY RULE IS APPLIED BY 2-1 MAJORITY OF THE COURT (NOTE THAT THE WASHINGTON CONSTITUTION WOULD NOT SUPPORT A GOOD FAITH EXCEPTION TO EXCLUSION)

United States v. Giltin, ___ F.3d ___ , 2019 WL ___ (9th Cir., March 4, 2019)

Facts and Proceedings below:

San Francisco police were investigating the murder of Calvin Sneed, a Los Angeles resident who had been dating Ms. L.G., a minor who had been visiting her family in San Francisco at the time of the murder. Ms. L.G. had been prostituting herself in Los Angeles, and police suspected that the family members of Ms. L.G. believed that Calvin Sneed had pimped her out. Based on this motive, police suspected that someone from Ms. L.G.'s family had killed Calvin Sneed as he was attempting to pick up Ms. L.G. to drive her back to Los Angeles.

Shortly after the murder, the police received a confidential tip that Ms. L.G.'s father was involved in the murder. The police made an exigent circumstances request for cell site location information (CSLI) to the father's cell phone carrier. Investigators gained information that was incriminating and inconsistent with the father's story that he was at home at all times relevant to the investigation.

The police then sought a search warrant for the CSLI for the phone of Antonio Gilton, who at the time they believed to be a brother of Ms. L.G. with whom she had recently been living in Los Angeles (police later learned that he was a cousin of Ms. L.G.). The affidavit included many details about the murder investigation, but the only information in the affidavit pointing to Antonio Gilton were the following facts: (1) Ms. L.G. had identified Antonio as her "brother" (he was actually her cousin); (2) Antonio was the current Los Angeles housemate of Ms. L.G.; (2) Ms. L.G. had confirmed that Antonio's cell number was one of the numbers in Ms. L.G.'s phone (but the phone apparently did not show any suspiciously recent calls); and (4) the family members had a likely motive for the murder of L.G.'s suspected pimp. Nothing in the affidavit indicated that Antonio Gilton had been in San Francisco at the time of the murder. A superior court judge issued a search warrant for the cell site location information for the phone of Antonio Gilton.

Antonio Gilton was subsequently indicted in federal district court for several crimes related to the murder. He moved to suppress the CSLI, and the district court suppressed the CSLI, concluding (1) that the affidavit for the warrant did not provide probable cause relating to CSLI for Antonio Gilton, and (2) that the affidavit was so lacking in support for the warrant that the Fourth Amendment "good faith" exception to the Exclusionary Rule does not apply in this case.

ISSUES AND RULINGS: The affidavit in support of a CSLI warrant relating to Antono Gilton's phone included many details about a murder investigation, but the only information in the affidavit pointing to Antonio Gilton were the following facts: (1) Ms. L.G. had identified Antonio as her "brother" (he was actually her cousin); (2) Antonio was the current Los Angeles housemate of Ms. L.G.; (3) Ms. L.G. had confirmed that Antonio's cell number was one of the numbers in Ms. L.G.'s phone (but the phone apparently did not show any *suspicious recent* calls); and (4) the family members of Ms. L.G. had a likely motive for the murder of L.G.'s

suspected pimp. Nothing in the affidavit indicated that Antonio Gilton had been in the San Francisco area at the time of the San Francisco murder of the pimp boyfriend of Ms. L.G.. A superior court judge issued a search warrant for the cell site location information for the phone of Antonio Gilton.

(1) Does the affidavit for the search warrant establish probable cause for a search for CSLI for Antonio Gilton's phone? (ANSWER BY NINTH CIRCUIT: No, rules a unanimous 3-judge panel)

(2) Assuming that the affidavit does not establish probable cause for the search, is the affidavit sufficient to meet the standard for the Fourth Amendment's good faith exception to the Exclusionary Rule? (ANSWER BY NINTH CIRCUIT: Yes, rules a 2-1 majority)

Result: Reversal of suppression ruling by U.S. District Court (Northern District of California); case remanded for further proceedings.

ANALYSIS:

1. Family motive information in affidavit fails to establish probable cause to search for CSLI regarding defendant's phone

In United States v. Carpenter, 138 S. Ct. 2206 (2018), the U.S. Supreme Court ruled that, absent exigent circumstances, the obtaining of information about a person's movements through CSLI generally requires a search warrant based on probable cause. The key analysis by the Ninth Circuit on the probable cause issue is as follows:

> Although the affidavit explained in some detail the need for the information from the unidentified person's phone, the affidavit mentions Gilton only three times. First, the affidavit records L.G.'s testimony that she "was staying with her elder brother in L.A." Second, the affidavit indicates that one of the phone numbers discovered in L.G.'s phone belonged to Gilton. Third, the affidavit states that L.G. identified which number belonged to Gilton. As the district court pointed out, the affidavit does not indicate that police had reason to believe that Gilton "was . . . in or around San Francisco on or around June 4, 2012."
>
> The affidavit's scant and innocuous references to Gilton do not establish a "fair probability" that evidence of the crime would be found in Gilton's location data. Rather, these facts merely indicate that L.G. had the phone number of a family member with whom she had lived in Los Angeles. Surely, it is common for an adolescent to store the phone number of the relative with whom she is living, and the mere existence of a familial connection between L.G. and Gilton is not sufficient to render it "reasonable" to search for evidence of the crime in Gilton's location data. . . .
>
> The government depends on two related inferences to support the finding of probable cause. First, the government contends that the totality of the circumstances supports an inference that "[t]he murder of Calvin Sneed was a family solution to a family problem." Second, because Gilton is related to L.G. and because L.G. met Sneed while living with Gilton, the government asserts that the magistrate could reasonably infer that Gilton was well aware of Sneed's relationship with L.G., that Gilton had reason to be upset with Sneed, and that he had a motive to commit the crime. The government argues that these two inferences tie Gilton to the murder. We disagree.

> First, we agree with the district court that the affidavit "pointed to one particular family member being involved in the attack: B. Gilton, not A. Gilton." Although the affidavit indicated that more than one person was likely involved in the shooting and that the second person might have been a family member, nothing in the affidavit suggested that the identity of the second person was Gilton.
>
> Nor do we agree with the government's contention that a magistrate could reasonably believe that Gilton was the accomplice because of his supposed motive. As the district court pointed out, there is no evidence in the affidavit that Gilton "had communicated with family members (or anyone else) about [L.G.'s] relationship with Sneed," although that surely was one of the reasons police wanted Gilton's call and text records. There is thus no basis in the affidavit to support the inference that Gilton was upset with Sneed, that he had motive to commit the crime, and, importantly, that he was in the San Francisco area on the night of the murder. We conclude, as did the district court, that the affidavit's passing references to Gilton are insufficient to support a reasonable inference that evidence of a crime would be found in his CSLI data.

[Case citation omitted; paragraphing revised for readability]

2. Good faith exception to the Fourth Amendment Exclusionary Rule

In U.S. v. Leon, 468 U.S. 897, 923 (1984), the U.S. Supreme Court ruled that the Fourth Amendment Exclusionary Rule does not apply where officers rely on a search warrant whose probable cause deficiencies "were not so stark as to render the officers' reliance on the warrant "entirely unreasonable." The majority judges in the Giltin case conclude that it was not entirely unreasonable for the officers to believe that the affidavit established probable cause to obtain CSLI information relating to the phone of Antonio Giltin. The dissenting opinion argues that it was unreasonable for the officers to rely on the affidavit as establishing probable cause.

LEGAL UPDATE EDITORIAL COMMENT: In State v. Crawley, 62 Wn. App. 29 (1991), Division Three of the Washington Court of Appeals ruled that the Fourth Amendment's Leon "good faith" exception to exclusion for search warrants does not apply under article I, section 7 of the Washington constitution. The Washington Supreme Court has never expressly rejected or adopted the Leon approach to search warrant exclusion under the Washington constitution, but the Washington Supreme Court's analysis in other cases strongly suggests that the Washington Supreme Court will not adopt a Leon "good faith" exception to the article I, section 7 Exclusionary Rule.

PROBABLE CAUSE TO SEARCH REGARDING CELL PHONES: AS TO A CREDIT CARD FRAUD FUGITIVE, AFFIDAVIT HELD ADEQUATE TO SUPPORT WARRANT FOR USE IN PURSUIT OF FUGITIVE OF SIMULATOR TO OBTAIN CELL SITE LOCATION INFORMATION FOR HIS PHONE; BUT AS TO HIS SUSPECTED CO-CONSPIRATOR, AFFIDAVIT HELD INADEQUATE IN ITS PC INFORMATION TO SUPPORT WARRANT FOR SEARCH OF HIS PHONE FOR EVIDENCE OF CREDIT CARD FRAUD CONSPIRACY

In United States v. Artis and Hopkins, ___ F.3d ___ , 2019 WL ___ (9th Cir., March 27, 2019), a three-judge Ninth Circuit panel addresses probable cause issues as to two warrants involving two defendants who were suspected of being co-conspirators in credit card fraud. At all times

relevant to the investigation, both were "fugitives from with outstanding warrants for their arrest on state law charges."

As to defendant Hopkins, the search warrant application sought authorization to use a cell-site simulator to track the location of a cell phone assigned the number (832) 763-5555. The affidavit recounted facts attempting to establishing probable cause to believe that Hopkins was a fugitive and was then-currently using the targeted cell phone.

As to defendant Artis, the search warrant application sought authorization to search the cell phone of Artis for evidence that Artis was engaged in a conspiracy to commit credit fraud under California state law. The affidavit recounted facts attempting to establish probable cause to believe that Artis was committing that crime. Note: The three-judge panel notes that there is no explanation from the government why the investigator chose not to focus this warrant and affidavit on: (1) Artis' status as a fugitive from justice, and (2) the government's legitimate interest in apprehending him as a fugitive wanted on an arrest warrant.

The Ninth Circuit panel in this case explains as follows the Court's reasoning underlying its conclusion that ***probable cause was established in the affidavit for the search warrant as to cell site location information as to fugitive Hopkins***:

> The Hopkins warrant was predicated solely on his status as a fugitive from justice and the government's legitimate interest in apprehending him.
>
> No one disputes that tracking the location of a particular cell phone will likely assist in locating the person using that phone. The warrant application therefore needed to establish probable cause to believe two things: that Hopkins was in fact a fugitive, and that he was currently using the targeted cell phone. Hopkins challenges only the adequacy of the showing as to his use of the phone.
>
> Agent Carlson's affidavit recounts the following facts.
>
> After he obtained possession of [the cell phone of Artis, the suspected co-conspirator], the phone received "several incoming calls" from the number (832) 763-5555. . . . A search of a law enforcement database revealed that the number was issued to an unknown subscriber with Verizon Wireless. Agent Carlson contacted a cooperating witness who told him that Hopkins' cell phone number was (832) 763-5555 and that the cooperating witness had learned this fact from Artis – someone who, as a "known associate" of Hopkins, would presumably know the latter's cell phone number.
>
> If credited, this information from the informant would easily establish probable cause to believe that Hopkins was using the targeted cell phone. Hopkins contends that the affidavit provided no basis for crediting the informant as reliable because nothing disclosed in the affidavit corroborated the informant's tip.
>
> We disagree. The informant's tip was corroborated by the fact that someone using the number attributed to Hopkins attempted to contact Artis, one of Hopkins' associates. Had the informant simply made up a phone number for Hopkins, it would be a remarkable coincidence to find a missed call from that number on Artis' cell phone.
>
> Hopkins assumes that Agent Carlson told the informant that several notifications from the number (832) 763-5555 had appeared on Artis' phone and then asked the informant

> to confirm whether that number belonged to Hopkins. If accurate, this sequence of events would undoubtedly undermine the corroborative value of the contacts from the targeted cell phone. But nothing in the affidavit supports Hopkins' version of events.
>
> And despite having had an opportunity to cross-examine Agent Carlson at the evidentiary hearing, Hopkins can point to nothing in the record to support his factual narrative. The informant's tip plus the corroborating notifications found on Artis' phone sufficed – although barely – to establish probable cause that Hopkins was using the targeted cell phone.

[Paragraphing revised for readability]

The Ninth Circuit panel explains as follows the Court's reasoning underlying its conclusion that ***probable cause was <u>not</u> established as to search of the phone of suspected credit card conspirator Artis***:

> Agent Carlson's application for the Artis warrant requested authorization to search his cell phone for evidence of his involvement in a conspiracy to commit credit card fraud, and the supporting affidavit accordingly sought to establish probable cause to believe that Artis was engaged in that offense. In reviewing the adequacy of the probable cause showing, we must assess whether probable cause has been shown with respect to the offense asserted as the basis for issuing the warrant; whether Agent Carlson's affidavit established probable cause with respect to some other offense is irrelevant. <u>See United States v. $186,416.00 in U.S. Currency</u>, 590 F.3d 942, 948 (9th Cir. 2010). We therefore reject the government's assertion that the warrant may be upheld because Agent Carlson's affidavit established probable cause to believe that Artis was a fugitive and that a search of his cell phone would yield evidence useful in finding him.
>
> The first obstacle the government faces in attempting to defend the adequacy of the probable cause showing is that the most probative evidence mentioned in Agent Carlson's affidavit must be disregarded. [The Ninth Circuit panel next explains, in discussion omitted from this <u>Legal Update</u> entry, why, as conceded by the government, certain unlawfully obtained information described in the affidavit must not be considered.]
>
> The remaining portions of Agent Carlson's affidavit fail to support a finding of probable cause that Artis was engaged in credit card fraud. The affidavit recounts the following facts: (1) Artis had outstanding arrest warrants for, among other offenses, identity theft; (2) Artis fled from Agent Carlson and his partner when they attempted to arrest him; and (3) Artis is a close associate of Hopkins, who also had an outstanding warrant for his arrest.
>
> Considered together, these facts fall far short of establishing probable cause regarding credit card fraud. They establish little more than Artis' status as a fugitive from justice.
>
> The affidavit included one additional piece of evidence that merits separate discussion. Agent Carlson stated, without further elaboration, that a cooperating witness had informed him that "Artis and Hopkins are involved in a conspiracy to commit credit card fraud and that they are in constant communication with each other in furtherance of the crime."

If credited, this information would obviously suffice to establish probable cause to believe that Artis was engaged in credit card fraud. But other than the evidence obtained from the unlawful search of Artis' girlfriend's apartment, which we must disregard, the affidavit offers no basis for concluding that the information provided by the unnamed informant was reliable. The affidavit does not state the informant's basis of knowledge or provide any information about the informant's reliability in the past. [Citing case law] Nor does the affidavit contain any information corroborating what the informant said. [Citing case law].

Contrary to the government's argument, Artis' outstanding arrest warrant for identity theft does not provide the necessary corroboration. Although identity theft and credit card fraud are potentially related offenses, without knowing more about the age of the warrant and the nature of the underlying conduct, no inferences can be drawn about whether the existence of the warrant bolstered the credibility of the informant's bare accusation.

As the district court held, after excising the evidence illegally obtained, the remaining portions of Agent Carlson's affidavit fail to establish a "fair probability" that evidence of credit card fraud would be found on Artis' cell phone. [Illinois v. Gates, 462 U.S. 213, 233, 238 (1983).] The search of the phone pursuant to an invalid warrant violated Artis' Fourth Amendment rights, requiring suppression of the fruits of that search unless the government can demonstrate that the good-faith exception to the exclusionary rule applies.

[LEGAL UPDATE EDITORIAL NOTE: The panel's Opinion goes on to explain, in discussion not addressed in the Legal Update, why the panel concludes that the Fourth Amendment's Good Faith exception to the Exclusionary Rule does not apply under the facts of this case. Note that if this federal case were instead a case decided under State of Washington law, the Washington constitution would not allow a Good Faith exception to the Exclusionary Rule.]

[Some citations omitted, one citation revised for style; paragraphing revised for readability]

Result: Reversal of suppression order of U.S. District Court (Northern District of California) in prosecution against defendant Hopkins; affirmance of suppression order of U.S. District Court in prosecution against defendant Artis.

LEGAL UPDATE EDITORIAL NOTE: The search warrant applications in this case were made by an FBI agent to California state court judges instead of to a federal court judge or judges. The Ninth Circuit panel asserts in discussion not otherwise addressed in this Legal Update entry that the court need not determine whether California state law permits federal agents to apply to state court judges for search warrants. That is because the Fourth Amendment does not make a search warrant invalid in this circumstance, so long as the search warrant is otherwise supported, including being supported by probable cause.

CIVIL RIGHTS ACT CIVIL LIABILITY: OFFICERS' ALLEGED ACTS OF STEALING ITEMS SEIZED UNDER A SEARCH WARRANT HELD ENTITLED TO QUALIFIED IMMUNITY BECAUSE CASE LAW HAS NOT YET CLEARLY ESTABLISHED THAT SUCH A TAKING FOLLOWING A WARRANT-AUTHORIZED SEIZURE FALLS UNDER CONSTITUTIONAL PROTECTIONS OF THE FOURTH OR FOURTEENTH AMENDMENTS

Jessop v. City of Fresno, ___ F.3d ___ , 2019 WL ___ (9th Cir., March 20, 2019)

LEGAL UPDATE PRELIMINARY EDITORIAL COMMENT: Obviously, the theft that the plaintiffs allege against warrant-executing officers in this federal case out of California is an egregious transgression that, if true, should result in the officers' dismissal, decertification, state court criminal conviction, and civil liability under state common law. The narrow legal question in this case is whether such alleged theft can result in civil liability under the federal Civil Rights Act. Plaintiffs' attorneys try to bring as bring as many types of cases as they can under the umbrella of the Civil Rights Act, primarily because they wish to afford their clients and themselves the remedy of recovery – on top of damages – of "reasonable" attorney fees, which can often be in the hundreds of thousands of dollars (or more) in litigated cases.

Facts and Proceedings below: (Excerpted from Ninth Circuit opinion)

> As part of an investigation into illegal gambling machines in the Fresno, California area, the City Officers executed a search warrant at three of [Plaintiffs'] properties in Fresno. The warrant, signed by Fresno County Superior Court Judge Dale Ikeda, authorized the
>
> > seiz[ure] [of] all monies, negotiable instruments, securities, or things of value furnished or intended to be furnished by any person in connection to illegal gambling or money laundering that may be found on the premises . . . [and] [m]onies and records of said monies derived from the sale and or control of said machines.
>
> If the City Officers found the property listed, they were "to retain it in [their] custody, subject to the order of the court as provided by law."
>
> Following the search, the City Officers gave [Plaintiffs] an inventory sheet stating that they seized approximately $50,000 from the properties. [Plaintiffs] allege, however, that the officers actually seized $151,380 in cash and another $125,000 in rare coins. [Plaintiffs] claim that the City Officers stole the difference between the amount listed on the inventory sheet and the amount that was actually seized from the properties.
>
> [Plaintiffs] brought suit in the Eastern District of California alleging, among other things, claims against the City Officers pursuant to 42 U.S.C. § 1983 for Fourth and Fourteenth Amendment violations. The City Officers moved for summary judgment on the basis of qualified immunity. The district court granted the motion and dismissed all of [Plaintiffs'] claims.

ISSUES AND RULINGS: 1. Has federal case law clearly established that officers violate the search and seizure provisions of federal constitution's Fourth Amendment if they steal items after the items have been validly seized under the terms of a search warrant? (ANSWER BY NINTH CIRCUIT PANEL: No, and therefore the officers are entitled to qualified immunity from this Civil Rights Act lawsuit for their alleged stealing of items that had been seized under the search warrant)

2. Has federal case law clearly established that officers violate the Due Process protections of the federal constitution's Fourteenth Amendment if they steal items after the items have been validly seized under the terms of a search warrant? (ANSWER BY NINTH CIRCUIT PANEL:

No, and therefore the officers are entitled to qualified immunity from this Civil Rights Act lawsuit for their alleged stealing of items that were seized under the search warrant)

Result: Affirmance of rulings of U.S. District Court (Eastern District of California) granting qualified immunity from Civil Rights Act civil liability to officers of the City of Fresno Police Department.

ANALYSIS:

Officers have qualified immunity for a civil lawsuit for a Civil Rights Act violation if their actions either (1) do not violate the constitution, or (2) the standard for any alleged violation was not "clearly established" by case law at the time of a violation. In this case, the Ninth Circuit panel chooses not to address the first question, and the panel addresses only the second question.
The Ninth Circuit opinion in this cases states that to be "clearly established" the standard at issue must be beyond debate under case law, which includes but is not limited to looking at Ninth Circuit decisions.

The panel's opinion analyzes the case law as follows (I have revised the subheadings):

1. Fourth Amendment case law on the relevant issue is not clearly established

> We have never before addressed whether the theft of property covered by the terms of a search warrant and seized pursuant to that warrant violates the Fourth Amendment. At the time of the incident, the five circuits that had addressed that question, or the similar question of whether the government's refusal to return l awfully seized property violates the Fourth Amendment, had reached different results. [Citing cases]
>
> The Second, Sixth, Seventh, and Eleventh Circuits have held that the government's failure to return property seized pursuant to a warrant does not violate the Fourth Amendment. Some of these courts have reasoned that because "the word 'seizure' [has been] defined as a temporally limited act," the Fourth Amendment provides protection only against the initial taking of property, not its continued retention. . . . Others have said that the failure to return seized property to its owner does not implicate the underlying rationales of the Fourth Amendment. . . .
>
> The Fourth Circuit, on the other hand, has held that federal agents violate the Fourth Amendment when they steal property that is seized during the execution of a search warrant. . . . The court relied on the Supreme Court's decision in United States v. Place, 462 U.S. 696, 706 (1983), and reasoned that the Fourth Amendment "regulates all [] interference" with an individual's possessory interests in property, "not merely the initial acquisition of possession." . . . Thus, because the agents' theft of the plaintiff's watch interfered with the plaintiff's interest in it, "such theft violates the Fourth Amendment." . .
>
> The absence of "any cases of controlling authority" or a "consensus of cases of persuasive authority" on the constitutional question compels the conclusion that the law was not clearly established at the time of the incident. Wilson v. Layne, 526 U.S. 603, 617 (1999). Although the City Officers ought to have recognized that the alleged theft of Appellants' money and rare coins would be improper, they did not have clear notice that it violated the Fourth Amendment.

> Nor is this "one of those rare cases in which the constitutional right at issue is defined by a standard that is so 'obvious' that we must conclude . . . that qualified immunity is inapplicable, even without a case directly on point." A.D. v. Cal. Highway Patrol, 712 F.3d 446, 455 (9th Cir. 2013). The allegation of any theft by police officers – most certainly the theft of over $225,000 – is undoubtedly deeply disturbing. Whether that conduct violates the Fourth Amendment's prohibition on unreasonable searches and seizures, however, is not obvious. The split in authority on the issue leads us to conclude so. . . .
>
> In the absence of binding authority or a consensus of persuasive authority on the issue, [Plaintiffs] have failed to demonstrate that it was clearly established that the City Officers' alleged conduct violated the Fourth Amendment. Accordingly, we hold that the City Officers are protected by qualified immunity against [Plaintiffs'] Fourth Amendment claim.

2. Fourteenth Amendment case law on the relevant issue is not clearly established

> [Plaintiffs'] Fourteenth Amendment claim suffers the same fate. [Plaintiffs] argue that the City Officers' theft of their property violated their substantive due process rights under the Fourteenth Amendment. Assuming that to be true, however, the City Officers are entitled to qualified immunity because that right was not clearly established. We have not held that officers violate the substantive due process clause of the Fourteenth Amendment when they steal property that is seized pursuant to a warrant. The Seventh Circuit is the only circuit that has addressed the related question of whether the government's refusal to return lawfully seized property to its owner violates the Fourteenth Amendment; it held that the substantive due process clause does not provide relief against such conduct. . . . . Because the City Officers could not have known that their actions violated the Fourteenth Amendment's substantive due process clause, they are entitled to qualified immunity against [Plaintiffs'] Fourteenth Amendment claim.

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

TRIBAL OFFICER AUTHORITY OVER NON-INDIANS ON RESERVATION: CROW PD OFFICER EXCEEDED HIS AUTHORITY IN DETAINING, WITHOUT ASKING ABOUT STATUS, OPERATOR ("WHO SEEMED TO BE NON-NATIVE") OF TRUCK THAT WAS PARKED ON SHOULDER OF HIGHWAY; EXCLUSIONARY RULE ISSUE ALSO ADDRESSED, ALONG WITH ISSUE RELATING TO TRIBAL OFFICER AUTHORITY OVER NON-INDIANS

In United States v. Cooley, ___ F.3d ___ , 2019 WL ___ (9th Cir., March 21, 2019), a three-judge Ninth Circuit panel addresses several issues related to law enforcement actions of tribal officers on highways that cross Indian reservations. A Ninth Circuit staff summary (which is not part of the panel's Opinion) briefly summarizes the panel's Opinion as follows:

> The panel affirmed the district court's order granting a motion to suppress evidence obtained as a result of the defendant's encounter with a Crow Indian Reservation police officer while the defendant's truck was parked on the shoulder of United States Route 212, which is a public right-of-way that crosses the Reservation.

The panel held that the district court's holding regarding the officer's lack of authority was correct, but the basis for its conclusion – that the defendant "seemed to be non Native" – was not. The panel explained that officers cannot presume for jurisdictional purposes that a person is a non-Indian – or an Indian – by making assumptions based on physical appearance. The panel wrote that an officer can rely on a detainee's response when asking about Indian status, but that the officer posed no such question to the defendant. The panel held that the officer exceeded his authority as a tribal officer on a public, nontribal highway crossing a reservation when he detained the defendant and twice searched the truck without having ascertained whether the defendant was an Indian.

The panel [also] held that the exclusionary rule applies in federal court prosecutions to evidence obtained in violation of the Indian Civil Rights Act's Fourth Amendment counterpart.

The panel [also] agreed in the main, but with a caveat, with the district court's determination that the officer violated the ICRA's Fourth Amendment analogue by seizing the defendant, a non-Indian, while operating outside the Crow Tribe's jurisdiction. The panel wrote that a tribal officer does not necessarily conduct an unreasonable search or seizure for ICRA purposes when he acts beyond his tribal jurisdiction, but that the tribal authority consideration is highly pertinent to determining whether a search or seizure of unreasonable under ICRA.

The panel explained that tribal officers' extra-judicial actions do not violate the ICRA's Fourth Amendment parallel only if, **under the law of a founding era**, private citizen could lawfully take those actions. Under this standard, the panel concluded that the officer violated the ICRA's Fourth Amendment parallel when he twice searched the defendant's truck after seizing him.

[Paragraphing revised for readability; bolding added]

LEGAL UPDATE EDITORIAL NOTE: It is my understanding that "law of a founding era" in the final paragraph of the quoted passage above is a reference to common law standards – i.e., non-legislative, court-made case law standards – for arrest, search and seizure in existence at the time of adoption of the U.S. Constitution prior to 1800.

Result: Affirmance of suppression ruling of Montana U.S. District Court.

LEGAL UPDATE EDITORIAL NOTE:

The Cooley decision is described as follows in a "case note" by WAPA Staff Attorney Pam Loginsky on the website of the Washington Association of Prosecuting Attorneys:

> **The exclusionary rule applies in federal court prosecutions to evidence obtained in violation of the Indian Civil Rights Act's (ICRA) Fourth Amendment counterpart. A tribal office may rely on a detainee's response when asking about Indian status to determine jurisdiction, but the officer "cannot presume for jurisdictional purposes that a person is a non-Indian – or an Indian – by making assumptions based on that person's physical appearance." A tribal officer who fails to determine whether the person he stopped on a public, nontribal highway crossing a reservation without ascertaining whether the person he stopped is an Indian will**

violate the ICRA's Fourth Amendment parallel if, under the law of a founding era, the tribal officer engages in actions that a private citizen could not lawfully take. In the instant case, the tribal officer's two searches off the defendant's truck could not have been undertaken by a private citizen under the laws of the founding era. Editor's Note: [The Cooley Opinion] does not alter a tribal officer's authority to detain a non-Indian who has apparently violated a state law for a reasonable time in order to turn him over to state authorities. See generally State v. Schmuck, 121 Wn.2d 373 (1993).

See also the charts on "Basic Rules of Jurisdiction in Indian Country" in Ms. Loginsky's Washington-focused law enforcement guide on the Criminal Justice Training Commission's LED Internet page: Confessions, Search, Seizure and Arrest: A Guide for Police Officers and Prosecutors May 2015, at pages 405-406.

THE CITY AND COUNTY OF SAN FRANCISCO AND ITS FORMER SHERIFF ARE IMMUNE FROM NEGLIGENCE CLAIMS BROUGHT BY THE FAMILY OF A WOMAN (KATE OF KATE'S LAW) WHO WAS KILLED BY AN UNDOCUMENTED ALIEN

In Steinle v. City and County of San Francisco, ___ F. 3d __ , 2019 WL ___ (9th Cir., March 25, 2019), a three-judge Ninth Circuit panel affirms the U.S. District Court's dismissal of the general negligence claim brought by the parents of Kathryn Steinle (the deceased is the "Kate" of federal legislative efforts known as "Kate's Law") against the City and County of San Francisco after Kathryn was shot and killed by an undocumented alien with a criminal record who was released from custody by the San Francisco's Sheriff's Department.

A Ninth Circuit staff summary (which is not part of the Ninth Circuit's Opinion) describes the ruling as follows:

> On March 13, 2015, the San Francisco Sheriff issued a Memo establishing protocols and parameters for communications between Sheriff's Department employees and Immigration and Customs Enforcement ("ICE") representatives. On March 27, 2015, ICE sent a detainer request asking the Sheriff's Department to notify ICE before releasing undocumented alien, Juan Francisco Lopez Sanchez, and to hold him until ICE could take custody of him.
>
> The Sheriff's Department released Lopez-Sanchez on April 15, 2015, without notification to ICE. On July 1, 2015, Lopez-Sanchez shot and killed Steinle near Pier 41 of the San Francisco Embarcadero.
>
> The Panel held that the Sheriff's issuance of the Memo was a discretionary act that was entitled to immunity under California Government Code section 820.2. The panel further held that the district court did not err in determining immunity on a motion to dismiss. The panel rejected plaintiffs' argument that the district court improperly took judicial notice of the Memo's contents.
>
> The panel held that the district court properly considered the Memo under the incorporation by reference doctrine, where the Memo formed the very basis of plaintiffs' claims and plaintiffs referred extensively to the Memo throughout district court proceedings. The panel rejected plaintiffs' arguments that the Sheriff lacked discretionary authority to issue the Memo, and therefore, was not entitled to immunity.

Specifically, the panel held that although [federal statutes] 8 U.S.C. §§ 1373(a) and 1644 prohibit restrictions on providing certain types of information to ICE, they plainly and unambiguously do not prohibit the restriction at issue in this case regarding release- date information.

The panel further held that, assuming the Sheriff's actions adversely affected ICE's ability to do its job, this did not, without more, strip him of the discretionary authority under California law to institute the policy that he did. The panel also rejected plaintiffs' argument that the Memo was a legislative act that deprived the Sheriff of immunity. The panel held that the Sheriff's failure to provide ICE with the inmate release date information did not violate the California Public Records Act. The panel also held that the district court correctly held that California Health and Safety Code section 11369 was inapplicable because the Sheriff's Department was not the "arresting agency," and plaintiffs' allegations failed to demonstrate any violation of section 11369. Finally, the panel rejected plaintiffs' claim that other local laws prohibited the Sheriff from limiting cooperation with ICE.

Judge Graber concurred in the opinion which relied on the general discretionary-immunity statute, California Government Code section 820.2, but wrote separately to add that the California legislature has provided an even clearer, specific grant of immunity to defendants in the present circumstances in California Government Code sections 845.8(a) and 846.

Result: Affirmance of dismissal by U.S. District Court (Northern District of California) of the negligence action brought against the City and County of San Francisco by the family of Kate Steinle.

CIVIL RIGHTS ACT CIVIL LAWSUIT BY STUDENT AND HIS PARENTS AGAINST SCHOOL DISTRICT IS REJECTED BASED ON HOLDINGS THAT SCHOOL DISTRICT DID NOT VIOLATE FREE SPEECH OR DUE PROCESS RIGHTS WHERE STUDENT WAS EXPELLED BASED ON HIS HIT LIST, EVEN THOUGH HE HAD NOT INTENDED FOR ANYONE ELSE TO SEE HIS HIT LIST

In McNeill v. Sherwood School Dt. 88J, ___ F.3d ___ , 2019 WL ___ (9th Cir., March 14, 2019), a three-judge Ninth Circuit panel rules in favor of a Portland, Oregon, suburban school district in a decision that is described as follows in a staff summary (not part of the Court's opinion):

The panel affirmed the district court's summary judgment in favor of a school district in an action brought pursuant to 42 U.S.C. § 1983 by student CLM and his parents alleging that the district violated plaintiffs' First Amendment and Fourteenth Amendment substantive due process rights when it expelled CLM for one year.

CLM, then a high school sophomore at Sherwood High School, created in his personal journal a hit list of students that "must die." When his mother discovered the hit list, she told a therapist, who informed the police, who told the school district.

The panel held that under the particular facts in this case, including the nature of the hit list, CLM's access to firearms, and the close proximity of CLM's home to the high school, the decision to discipline CLM for his off-campus speech did not violate his constitutional right to free speech. The panel held that when considering

whether a school district may constitutionally regulate off-campus speech, courts must determine, based on the totality of the circumstances, whether the speech bears a sufficient nexus to the school. The panel stated that there is always a sufficient nexus between the speech and the school when the school district reasonably concludes that it faces a credible, identifiable threat of school violence. The panel further held that a student's lack of intent to convey his off-campus speech to any third party is relevant to an evaluation of whether the speech constitutes a credible threat, but is not dispositive.

The panel held that the claim brought by CLM's parents alleging substantive due process violations failed because their fundamental right to choose CLM's educational forum was not infringed by the School District's discipline of CLM.

[Bolding added]

The three-judge panel's Opinion is lengthy, both in its description of the facts and in its legal analysis. Interested readers will want to read the March 14, 2019 Opinion, which is accessible on the Ninth Circuit's internet "Published Opinions" page that is arranged chronologically. The panel's Opinion concludes with the following summary of the Court's rationale for the ruling:

> The number of reported tragic school shootings over the past two decades emphasizes the need for school districts to have the authority to take disciplinary action when faced with a credible threat of school violence. [See Wynar v. Douglas County School District, 728 F.3d 1062, 1069 (9th Cir. 2013)]. Although a student's expectation as to the circulation of his speech may be relevant to an evaluation of whether the speech constitutes a credible threat, the student's intent as to circulation does not condition the school's regulation of threatening off-campus speech. As we noted in Wynar, "[w]e can only imagine what would have happened if the school officials, after learning of [the] writing, did nothing about it," and CLM did in fact come to Sherwood High with a firearm and the intent to carry out his hit list. [Wynar] 728 F.3d at 1070 (alterations in original) (quoting Boim v. Fulton Cty. Sch. Dist., 494 F.3d 978, 984 (11th Cir. 2007)).
>
> We hold that the School District's decision to discipline CLM for his off-campus speech did not violate CLM's constitutional right to free speech. A student's lack of intent to convey his off-campus speech to any third party is relevant to an evaluation of whether the speech constitutes a credible threat, but is not dispositive. Rather, a court must consider all the relevant factual circumstances when determining whether a school's regulation of a student's off-campus speech is constitutional. Here, CLM's lack of intent to communicate the contents of his hit list is offset by the fact that his speech created a credible, identifiable threat of school violence.
>
> The McNeils' substantive due process claim also fails because their fundamental right to choose CLM's educational forum was not infringed by the School District's discipline of CLM.

[Citations revised for style]

Result: Affirmance of ruling of U.S. District Court (Oregon) that granted summary judgment to the school district.

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WASHINGTON STATE COURT OF APPEALS

MURDERER LOSES CHALLENGES (1) TO BALLISTICS EXPERT'S TESTIMONY, (2) TO TRIAL COURT'S BARRING OF DEFENDANT'S OTHER-SUSPECT THEORY, AND (3) TO SUFFICIENCY OF EVIDENCE OF PREMEDITATION

In State v. DeJesus, ___ Wn. App. ___ , 2019 WL ___ (Div. I, March 11, 2019), a three-judge panel of Division One of the Court of Appeals rejects defendant's appeal from his convictions for two counts of premeditated first degree murder, two counts of attempted first degree premeditated murder, and one count of first degree burglary. Three of the multiple rulings of the Court of Appeals are that: (1) the trial court did not err in not holding a Frye hearing to determine if, in light of the conflicting views of some forensic scientists, expert testimony incriminating him based on ballistics was admissible; (2) the trial court did not abuse its discretion in barring defendant from arguing to the jury that either of two other men could have committed the murderous attacks; and (3) the evidence in the case is sufficient to support the premeditation element of premeditated first degree murder.

Facts and Proceedings below:

DeJesus previously had a relationship and fathered a child with Heather Kelso. Kelso had recently filed a complaint against DeJesus with CPS, and she had also recently obtained protection orders against him, thus making it difficult for DeJesus to see their child. On the night of the shooting, Ms. Kelso was in her trailer-residence; her child was not present, and her boyfriend, Mathew Dean, was visiting her. Also in the trailer was a young adult friend, Ms. Jalisa Lum, as well as Ms. Lum's two-year-old son, Kaden.

When Ms. Kelso went to the back porch after midnight to smoke, she was shot by someone who was outside the trailer at that point. Her boyfriend, Mr. Dean, came to her aid and pulled her back inside the trailer.

More shots were fired from someone who had apparently now followed Ms. Kelso and Mr. Dean inside the trailer. In the subsequent shooting, Mr. Dean was struck by three shots but was not killed. Ms. Lum's two-year-old child was inadvertently killed by a stray bullet to the head.

Mr. DeJesus was tried and convicted on the multiple charges noted above.

ISSUES AND RULINGS: (1) Under Frye v. United States, 293 F. 1013 (D.C. Cir. 1923) evidence deriving from a scientific theory or principle is admissible only if that theory or principle has achieved and retained general acceptance in the relevant scientific community. There is some scientific research indicating weaknesses in the toolmark ballistics testing that was relied on by the State's ballistics expert in this case.

Did the trial court err in not holding a hearing under Frye to determine if ballistics testing is generally accepted in the relevant scientific community? (ANSWER BY COURT OF APPEALS: No, a Frye hearing was not required)

(2) The trial court did not allow defendant to argue to the jury that either of two men could have been the shooter in the case, i.e.: (A) the former boyfriend of Ms. Julisa Lum, the woman who was not shot (the defendant wanted to argue that the actual shooter was the baby-daddy father of the two-year-old who was killed by a stray bullet); or (B) the pill dealer for Ms. Lum.

Defendant was not able to point to any substantial evidence of motive, means or opportunity for either of his proffered "other suspects."

Did the trial court act lawfully within its discretion in not allowing defendant to argue to the jury regarding the possibility that one or both of the two men were the actual perpetrator? (ANSWER BY COURT OF APPEALS: Yes, the trial court was within its discretion in precluding the "other suspects" claims)

(3) Defendant contends that at least as to the two-year-old child and the child's mother there is no evidence supporting the jury's determination that the killing or attempted killing was premeditated. In light of the concept of "transferred intent," is there sufficient evidence to support premeditation on all of the convictions for which premeditation is an element of the crime? (ANSWER BY COURT OF APPEALS: Yes, there is sufficient evidence of premeditation for the four convictions where premeditated intent is an element of the crimes)

Result: Affirmance of Kitsap County Superior Court convictions of Geraldo Castro DeJusus for two counts of first degree premeditated murder, two counts of attempted first degree premeditated murder, and one count of first degree burglary.

ANALYSIS:

1. No reversible error occurred in admitting the expert's opinion on ballistics testing

Police searched the residence where DeJesus was living at the time of the killings. They found a Smith and Wesson gun case. Inside the case, they found a loaded magazine, a cleaning brush, and some literature about the gun. A spent shell casing was inside an envelope tucked inside the inner lining of the gun case. The magazine had 15 Federal brand 9mm hollow-point rounds in it.

A former Washington State Patrol Crime Laboratory analyst testified that she had examined evidence in the case. She compared the cartridge case from the Smith and Wesson envelope and the cartridge casings from the killing scene. She concluded that the cartridge casings from the scene had consistent toolmarks with the casing found in the Smith and Wesson envelope, indicating that they were fired from the same gun. The opinion for the unanimous 3-judge panel rejects defendant's challenge to that expert testimony under analysis along the following lines.

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. 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. However, 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, DeJesus requested a Frye hearing on the anticipated ballistics opinion of the State's expert based on toolmarks on bullet casings. To demonstrate that a ballistics science dispute exists, DeJesus relies on 2008 and 2009 reports from the National Research Council (NRC) of the National Academy of Sciences, 2016 President's Council of Advisors on Science and Technology's (PCAST) report, "scholarly challenges," and declarations from his two defense experts.

After extended review of the issue and literature and case law from other jurisdictions, the DeJesus Court concludes under the following analysis that the trial court did not err in denying a Frye hearing:

> Courts from around the country have universally held that toolmark analysis is generally accepted. DeJesus has not cited to judicial authority holding that the toolmark analysis is not generally accepted. Even in cases where the trial court did not hold a Frye hearing, the appellate court did not reverse the decision to admit the evidence. . . .
>
> The trial court addressed DeJesus's motion to suppress ballistics evidence and for a Frye hearing over the course of several hearings. The trial court expressly found that the toolmark testing and analysis the expert in this case used is a generally accepted technique. Once the evidence is accepted as scientifically acceptable, the question of admissibility turns on whether the witnesses qualify as experts and whether the proffered testimony would be helpful to the trier of fact. . . .
>
> Under the circumstances here, the trial court did not err in admitting the evidence under ER 702. Any objections that DeJesus had to the ballistics identification addressed the weight of the testimony, not its admissibility.

2. No error occurred in the trial court's barring Defendant's "other suspects" claim (this is sometimes called a "third party perpetrator" theory)

The development of the case law in the United States on the another-suspect-did-it issue has been in part guided by the Sixth Amendment right to counsel for defendants. Because the premise underlying the introduction of "other suspect" evidence is to show that someone other than the defendant committed the charged crime, the standard for admission is whether the proffered evidence about another suspect supports a reasonable doubt as to the defendant's guilt.

Such proffered "other suspect" evidence must be both (1) material (the fact to be proved must be of consequence in the context of the other facts and the applicable substantive law) and (2) probative (the evidence must provide some supporting proof or disproof of a fact). These are highly fact-dependent questions, and the trial court's ruling on the issue is reviewed under an abuse of discretion standard.

After extensive discussion of the facts and the theories of defendant DeJesus, the Court of Appeals concludes in DeJesus that the trial court acted within its discretion because the defendant cannot point to any substantial evidence of motive, means or opportunity for either of the men suggested as alternative suspects.

3. Sufficiency of evidence of premeditation

In key part, the DeJesus Court's analysis of the premeditation issue is as follow:

> A person is guilty of first degree murder when "[w]itha premeditated intent to cause the death of another person, he or she causes the death of such person or of a third person." RCW 9A.32.030(1)(a). "Premeditation must involve more than a moment in time; it is defined as the deliberate formation of and reflection upon the intent to take a human life and involves the mental process of thinking beforehand, deliberation,

reflection, weighing or reasoning for a period of time, however short." State v. Hoffman, 116 Wn.2d 51, 82-83 (1991) (footnotes omitted). Premeditation can be proved by circumstantial evidence where the inferences drawn by the jury are reasonable and the evidence supporting the jury's verdict is substantial. There are four characteristics or factors that are particularly relevant to establish premeditation: motive, procurement of a weapon, stealth, and the method of killing. State v. Hummel, 196 Wn. App. 329, 355 (2016).

DeJesus argues that, looking at the evidence in the light most favorable to the State, DeJesus had a motive to kill Kelso [and her boyfriend], but did not have a motive to kill Kaden or Lum.16 He asserts that, in the light most favorable to the State, he brought a gun to the home to kill Kelso, not to kill Lum and her son.

To convict for attempted first degree murder, the State needed to prove intent to commit first degree murder with premeditation and a substantial step towards the commission of that crime. RCW 9A.32.030(1)(a); RCW 9A.28.020(1). The State argues that DeJesus knew other people besides Kelso were in the home. It argues that DeJesus waited until Kelso went onto the back porch before he began shooting, and that, if he intended to kill only Kelso, it would have made more sense for him to flee after he shot her. The State contends that, "It is clear from the circumstantial evidence presented in this case that DeJesus intended to kill all the residents or possible witnesses based on his actions inside the residence." The State cites State v. Condon, 182 Wn.2d 307 (2015).

In Condon, the State presented evidence that the defendant entered the home "wielding a loaded handgun and intending to commit a robbery." Our State Supreme Court reasoned that, given that he entered the house with a loaded gun, intending to rob a drug dealer, a rational jury could have found premeditation.

In State v. Price, 103 Wn. App. 845 (2000), the defendant argued that, because he fired one shot into a vehicle, his actions could not constitute a substantial step toward the commission of first degree murder for two victims. This court reasoned that the "act of deliberately firing a gun toward an intended victim is 'strongly corroborative' of an attempt to commit first degree murder." . . . And, it highlighted that RCW 9A.32.030 does not require specific intent to kill a specific victim. . And, it stated that "neither does the fact that Price may have thought that the car was occupied only by the driver prevent him from possessing the requisite intent as to the passenger." It held that a reasonable jury could have found that firing a single bullet into a vehicle with two people sufficiently corroborated that Price took a substantial step toward commission of first degree murder for both victims.

In [State v. Hummel] this court held that the evidence was insufficient to find that Hummel killed his wife Alice with premeditated intent to commit murder in the first degree. The [Hummel] court stated, "The evidence that Hummel disposed of her body, concealed her death, and fraudulently obtained her disability checks after she died is evidence of guilt but does not prove premeditation." It found that the State did not present evidence of motive, planning, the circumstances or the method and manner of death, or the deliberate formation of the intent to kill Alice beforehand.

DeJesus argues here, "The method was a single shot in the dark. Unlike with Kelso and Dean, he fired once toward Lum, accidentally killing [Kaden] in the process." He asserts

that, because there are no multiple acts of violence perpetrated against Lum and Kaden, it does not support premeditation.

This case differs from Hummel. The State presented evidence that DeJesus shot Kelso while she was standing on the back porch, and then DeJesus entered the home and fired multiple shots. Lum testified that, while she was still in her bed, she heard Kelso say, without "rais[ing] her voice hardly" that she had been shot. Lum heard more gunshots and heard Dean ask her for help. Lum then got out of her bed and covered her son on the ground. While she was on the floor, she heard "a lot of gunshots." Then, she heard someone she thought was Dean come through her room and ask her for help or to call 911. After she heard the window shatter, Lum testified that "somebody opened up the door again, [and] shot towards me and Kaden." She felt the bullet go by her face, and pretended to be dead.

In the light most favorable to the State, the evidence shows that DeJesus went to the home to shoot Kelso. The State presented evidence of motive and planning. After shooting Kelso, DeJesus entered the home with a loaded gun, shot Kelso again, and pursued and shot Dean as he ran through the home. These circumstances show a premeditated intent to kill not only Kelso, but the other occupants of the home, as well . DeJesus then deliberately shot at Lum while she was holding Kaden on the ground. The jury could have concluded that, when DeJesus ran into the dark bedroom pursuing Dean, he thought that the person huddled on the floor was Dean. **The intent is transferred. It is immaterial if he thought it was Dean, when really it was Lum, or the fact that he fired only once at two victims. The statutory definition of first degree murder does not require specific intent for a specific victim**.

Under the reasoning of Condon and Price, a reasonable jury could have found the essential elements of first degree premeditated murder as to Kaden and attempted first degree premeditated murder as to Lum.

[Some citations omitted, other citations revised for style; bolding and subheadings added]

FIVE RULINGS: (1) NO "SEIZURE" OCCURRED IN INVESTIGATORY, IN-HOME QUESTIONING OF STEPMOTHER ABOUT HER SUSPECTED ASSAULT OF HER CHILD WHERE HUSBAND HAD CONSENTED TO POLICE ENTRY AND CIRCUMSTANCES REMAINED VOLUNTARY; (2) NO CUSTODY FOR MIRANDA PURPOSES OCCURRED DURING THAT QUESTIONING WHERE CIRCUMSTANCES WERE NOT "POLICE DOMINATED"; (3) UNDER EVIDENCE RULES, CHILD'S RECANTING TESTIMONY OPENED UP THE USE OF PRIOR STATEMENTS HE HAD MADE TO INVESTIGATORS; (4) SIXTH AMENDMENT RIGHT TO CONFRONTATION WAS NOT VIOLATED BY IMPEACHING THE CHILD AT TRIAL; AND (5) CHAPTER 26.44 RCW'S PROCEDURAL DIRECTIVES FOR INVESTIGATING CHILD ABUSE CASES DOES NOT SUPPORT SUPPRESSION OF VICTIM'S STATEMENTS

State v. Ho, ___ Wn. App. ___ , 2019 WL ___ (Div. I, March 25, 2019)

Facts:

In January 2016, Child Protective Services (CPS) received an anonymous complaint that a 10-year-old boy (N.Y.) had severe bruising on his buttocks and the backs of his legs. The trial

court's unchallenged findings, made after a hearing on Ho's request to suppress evidence, describe as follows the investigation of this complaint:

> A. On or about January 15, 2016, between approximately 1:41 p.m. and 4:45 p.m. the following events took place;
>
> B. [A deputy sheriff] was working uniformed patrol for Snohomish County driving a patrol car equipped with emergency lights and siren. At approximately 1:41 p.m. he was dispatched to a CPS (Child Protective Services) complaint located at 11831 Freeway Place, Everett, WA. According to the text of the call, - Dianna Lucas, a Social Worker with DSHS [Department of Social and Health Services] called 9-1-1 requesting the assistance of SCSO (Snohomish County Sheriff's Office) to check the welfare (health and safety check) of a juvenile child at the listed address.
>
> C. Upon arrival, Ms. Dianna Lucas explained to the deputy that a referral came into CPS the prior day regarding severe bruising on the buttocks of a ten year-old child (victim, N.Y.) who lived at the listed address.
>
> D. According to the referral, the witness described the bruising and explained that it appeared to have been caused by a paddle with holes in it.
>
> E. CPS/DSHS Social Worker Dianna Lucas and [the deputy] made contact at the residence and spoke with Shun-Kai Yang, the alleged victim's biological father. Ms. Lucas and [the deputy] introduced themselves and explained the reason for the contact (health and safety check of N.Y.). Shun-Kai Yang allowed them to enter the residence while they interviewed him. Mr. Yang explained that his wife, (defendant) Tien Ho and (victim) N.Y. were at the Mall [Tien Ho is N.Y.'s step-mother]. Ms. Lucas requested that Mr. Yang have Tien Ho and N.Y. return to the residence for an interview. Mr. Yang called Tien Ho, who agreed to return home.
>
> F. While Ms. Lucas and [the deputy] were waiting for Tien Ho and N.Y. to return, Shun-Kai Yang explained that Tien Ho is the primary caregiver for their son. He explained that he works first shift at Boeing, so most of the parenting responsibilities are handled by Tien Ho. When questioned about how N.Y. gets disciplined, Mr. Yang told [the deputy] that they talk with him, and occasionally spank him if needed. He denied knowing anything about bruising on his son, N.Y.
>
> G. A short time later, defendant Tien Ho and N.Y. arrived at the location. Dianna Lucas and [the deputy] introduced themselves and explained the reason for the contact. Ms. Lucas requested to interview the victim in his bedroom. Shun-Kai Yang and Tien Ho did not object to the interview. The deputy stood by while Ms. Lucas interviewed N.Y in his bedroom.
>
> H. [The deputy] reported that N.Y. seemed hesitant and reserved during the conversation. Ms. Lucas started with some introductory questions involving school, hobbies, etc. When Ms. Lucas asked N.Y. about how he is disciplined, the victim claimed that his mom (the defendant) "accidentally gets mad, she accidentally slaps my hand." N.Y. said she slapped him with an open hand, and that it happened about two days prior. N.Y. also stated that he falls down a lot and was not being careful.

I. When Ms. Lucas asked if he had any bruising, N.Y. indicated that he had bruising on his bottom because [he] fell from a tree. When asked what tree he fell from, N.Y. said that he did not know. Ms. Lucas asked N.Y. if she left the room would he show the bruises to the deputy. The victim then said that he did not want to talk anymore. [The deputy] reported that N.Y. essentially shut down at that point, and looked at his feet when he told Ms. Lucas he did not want to talk anymore.

J. Dianna Lucas and the deputy re-contacted Shun-Kai Yang and Tien Ho in the living room. Ms. Lucas then requested that Mr. Yang and the defendant take N.Y. to the hospital for an evaluation. Tien Ho reportedly made several excuses why she could not take N.Y. to the hospital.

K. [The deputy] explained to the defendant that based on the accusations it was necessary for N.Y. to be evaluated. He explained to Ms. Ho that spanking a child (within reason) is legal in Washington. Tien Ho explained that N.Y. reportedly has ADHD (attention deficit hyperactivity disorder) and that he has difficulty obeying instruction[s]. The defendant subsequently admitted to the deputy that N.Y. did have bruising on his buttocks.

L. The defendant admitted to the deputy that she had spanked N.Y. two times with her hand because she was overwhelmed by N.Y.'s behavior. Again, Tien Ho was asked by the CPS Social Worker and the deputy to take N.Y. to the hospital, but she continued to argue.

M. Tien Ho eventually admitted that she used a "stick" to spank N.Y. [The deputy] asked the defendant if it was a stick in the yard or one in the house. Ms. Ho told [the deputy] that the "stick" was in the house. [The deputy] asked Tien to show him the "Stick."

N. The defendant escorted [the deputy] to the downstairs portion of the house to the rear sliding glass door. Tien Ho removed a wood dowel approximately three feet long and approximately slightly more than 1 inch in diameter.

0. [The deputy] then took custody of the dowel/"stick." He confirmed with the defendant "You used this to spank [N.Y.]?" to which Tien Ho replied "Yes." The defendant and the deputy then returned to the upstairs living room and [the deputy] showed Ms. Lucas the "stick" that the defendant admitted using to spank N.Y. Tien Ho then volunteered "I promise, this will never happen again." The defendant subsequently explained that in her culture that it is ok to spank your child.

P. [The deputy] explained to the defendant the seriousness of using the dowel to spank the victim.

Q. The deputy consequently contacted [a sergeant] with the Special Investigation Unit and briefed him on the incident. It was confirmed with the sergeant that N.Y. should be taken to the hospital for an evaluation, and that Tien Ho should be arrested.

R. [The deputy] then told Tien Ho that she was under arrest. He advised Ms. Ho of her Constitutional Rights. [The deputy] asked Tien Ho if she understood her rights to which she replied "Yes." The deputy then asked the defendant if she was willing to speak with him to which she replied "Yes." Tien Ho subsequently asked the deputy "Can I have a pen and piece of paper to write a letter to the Judge to tell him that this will never happen

> again?" [The deputy] told the defendant that he would allow her to write a statement once they got to the Snohomish County Jail.
>
> S. Upon arrival at the Jail, prior to entry into booking, Tien Ho told [the deputy] "I think I want to talk to a lawyer." He did not ask Tien Ho any further questions about the incident.

(Some alterations in original.)

Proceedings below: (Excerpted from the Court of Appeals opinion)

> The State charged Ho with second degree assault based on two theories, assault with a deadly weapon and an alternative "torture" theory. During the jury trial, the State called N.Y. as a witness. He testified that he "wasn't hit with a stick." He said he did not receive any injuries from his stepmother and did not remember bruising on his body. After N.Y.'s testimony, the State used parts of his pretrial forensic interview to impeach his credibility. The court instructed the jury to consider these statements only to evaluate N.Y.'s credibility and not to consider them for the truth of the matter asserted. . . .
>
> . . . .
>
> The jury returned a verdict of guilty of second degree assault.

ISSUES AND RULINGS: (1) The deputy sheriff and social worker obtained consent from the biological father of N.Y. to come in the home to investigate the allegations of abuse of N.Y. A short time later, Ms. Ho and N.Y. arrived home. Although Ms. Ho was not expressly told by the deputy that Ho could leave or terminate the interview, the totality of the circumstances, including the manner and wording of questioning of the defendant by the deputy and social worker would have conveyed to a reasonable person that she could terminate the questioning and/or freely move about her home during the questioning.

Was Ms. Ho *seized* during that questioning for purposes of article I, section 7 of the Washington constitution? (ANSWER BY COURT OF APPEALS: No)

(2) Although Ms. Ho was not expressly told by the deputy that Ho could leave or terminate the interview, the totality of the circumstances, including the manner and wording of questioning of the defendant by the deputy and social worker would have conveyed to a reasonable person that she could terminate the questioning and/or freely move about her home during the pre-arrest questioning.

Was Ms. Ho *in custody* for purposes of Miranda during that questioning such that Miranda warnings were required? (ANSWER BY COURT OF APPEALS: No)

(3) N.Y. told the social worker during questioning in his home that his step-mother, Ms. Ho, had spanked and bruised him, though understating the manner and extent of the application of punishment. At trial, N.Y. testified that he did not receive any injuries from his stepmother, and that he did not remember having any bruises on his body.

Was it within the discretion of the trial court under the Evidence Rules to allow the prosecutor to impeach N.Y. by presenting evidence of N.Y.'s prior inconsistent statements? (ANSWER BY COURT OF APPEALS: Yes)

(4) The trial judge informed the jury that the alleged prior inconsistent out-of-court statements of N.Y. were to be considered only to evaluate N.Y.'s credibility and not to be considered for the truth of the matter asserted. The prosecution did not argue otherwise to the jury.

Under those circumstances, is there any issue in this case under the Confrontation Clause of the Sixth Amendment? (ANSWER BY COURT OF APPEALS: No)

(5) Chapter 26.44 RCW provides some directions for official investigation of child abuse allegations. Assuming for the sake of argument that the questioning of N.Y. in this case did not fully comply with the directives of the statute, does the statute provide a basis for suppression of N.Y.'s statements in this case? (ANSWER BY COURT OF APPEALS: No)

Result: Affirmance of Snohomish County Superior Court conviction of Tien Thuy Ho of second degree assault.

ANALYSIS: (Excerpted from Court of Appeals opinion; subheadings have been revised)

1. No seizure occurred before the deputy told Ms. Ho that she was under arrest

> Because article 1, section 7 "grants greater protection to individual privacy rights than the Fourth Amendment,'" we analyze Ho's claim under it. A seizure occurs under article 1, section 7 when an officer restrains an individual's freedom of movement and, given the officer's display of authority or use of physical force, she would not reasonably believe that she is free to leave or decline a request.° The test is objective. So, if the officer uses no physical force, the defendant must establish that, given all the circumstances, a reasonable person would have experienced an unreasonable restraint on her freedom. Whether an interaction is a seizure does not depend on "the officer's suspicions" but instead on "the interaction between the person and the officer."
>
> An officer commanding a person, issuing orders, or demanding a particular action all establish a situation where a reasonable person would likely not feel free to end the encounter. By contrast, if an officer merely questions a person, he has not seized that person. Further, an officer does not seize a person by entering a home if a person with authority to consent to the entry does so, regardless of whether the officer advised the person of his right to refuse consent.
>
> Here, Yang [the biological father] consented to [the deputy's] entry. Throughout their time in the house, [the social worker and the deputy] told Ho what they were doing. They asked permission to interview N.Y. in his bedroom and stopped the interview when N.Y. said he did not want to speak anymore. They did not investigate the house, apart from the time spent in the entryway and living room talking to Yang and Ho, in N.Y.'s bedroom, and in the basement, after being led down there by Ho. Ho handed [the deputy] the dowel. [The deputy and the social worker] repeatedly asked Ho to take N.Y. to the hospital. Only after all of these events and after talking to [his supervisor] did [the deputy] decide to arrest Ho. These facts provide sufficient evidence to support a conclusion that a reasonable person would feel she could terminate the interview or leave to a different room.
>
> Ho compares this case to [the U.S. Supreme Court decision in Rogers v. Richmond, 365 U.S. 534 (1961). Yet the court in Richmond did not focus on a Fourth Amendment claim of unreasonable search and seizure but rather on a Fourteenth Amendment due process

claim. Further, Richmond is factually distinguishable. In Richmond, the accused was incarcerated and, after refusing to confess, was told that his wife would be taken into custody. Here, Ho was in her house and free to ask the officer to leave or to move to a different room.

We conclude that Ho failed to demonstrate that [the deputy] seized her. The trial court did not err when it denied her motion to suppress this evidence.

2. Ms. Ho was not in "custody" for purposes of Miranda during the pre-arrest questioning

Ho asserts that the State violated her right against self-incrimination because [the deputy] did not give her a Miranda warning until he said he was going to arrest her and thus the trial court erred by not suppressing her confessions.

The Fifth Amendment to the United States Constitution protects against compelled self-incrimination. For a confession made while in custody to comply with the Fifth Amendment, the State must show that it informed the suspect of her right to remain silent and she knowingly and intelligently waived it. This requirement is triggered when that person is in custody and being interrogated by a state agent. A person is in custody if "a reasonable person in the individual's position would believe. . . she was in police custody to a degree associated with formal arrest." This is an objective test. Whether or not an officer intended to take the person into custody or was focusing on the person as a potential suspect does not affect the analysis.

This court looks at the totality of the circumstances to decide whether a suspect was in custody. United States v. Craighead, 539 F.3d 1073, 1082 (9th Cir. 2008). To show that she was in custody at the time she confessed, the defendant must show by objective facts that the presence of the officer restricted her freedom of movement. If the confession was made in .her home and the defendant shows that officers had "turned the otherwise comfortable and familiar surroundings of the home into a 'police dominated atmosphere,'" she demonstrates custody. United States v. Craighead identifies the factors a court considers when reviewing the circumstances to determine if a police atmosphere occurred

> (1) the number of law enforcement personnel and whether they were armed; (2) whether the suspect was at any point restrained, either by physical force or by threats; (3) whether the suspect was isolated from others; and (4) whether the suspect was informed that he was free to leave or terminate the interview, and the context in which any such statements were made.

The Craighead court found a police-dominated atmosphere because eight officers, a subset with their weapons drawn, entered the house. And the suspect in that case was isolated in a storage room, he could not leave because an armed guard stood between him and the exit, and he knew the officers would not leave the premises until they completed the search for which they had a warrant.

Here, Yang [the biological father] gave permission for [the deputy and social worker] to enter. Only one enforcement officer was present, albeit armed, when Ho made her confessions. She was not isolated from her husband, Yang. These circumstances are very different from those in Craighead and support the conclusion that this was not a custodial interrogation. Only the fact that Ho was not told she could leave or terminate

the interview supports the assertion that she was in custody. This fact alone is insufficient to outweigh the substantial evidence indicating Ho was not in custody when she made her confessions. We conclude that Ho did not establish that she was in custody. The trial court did not err by denying her motion to suppress.

3./4. Impeachment of alleged victim with his prior statements did not violate the Evidence Rules on hearsay, nor did it violate the defendant's Sixth Amendment right to confrontation

Ho claims that the trial court abused its discretion by admitting part of the videotaped forensic interview with N.Y. because it was inadmissible hearsay. She also contends the admission violated her rights under the confrontation clause of the Sixth Amendment.

Prior inconsistent statements may be admitted to impeach a witness's credibility. If a court admits a statement for impeachment purposes, it does not admit the evidence as proof of the matter asserted. So the evidence is not subject to the requirements of the confrontation clause.

Here, a segment of the forensic interview was admitted to impeach N.Y. after he testified that he had not been hit with a stick. The trial court included an instruction to the jury limiting their consideration of this evidence. The jurors did not have a transcript of the interview in the jury room.

Ho claims that it was improperly admitted under hearsay exceptions for a recorded recollection or a prior inconsistent statement. But she does not contest its status as impeachment evidence, making it admissible as a prior inconsistent statement. Here, the State did not offer parts of the forensic interview to establish the truth of the matters asserted. Since the State offered them for impeachment, their admission did not violate Ho's confrontation clause rights. The trial court did not abuse its discretion by admitting them.

5. Chapter 26.44 RCW's provisions addressing child abuse investigations do not provide a basis for suppression of N.Y.'s statements to investigators

RCW 26.44 establishes guidelines for reporting child abuse. RCW 26.44.030(1)(a) lists professions mandated to report suspected child abuse. It also requires an investigation or a family assessment be made in response to a report of alleged abuse. [RCW 26.44.030(14)(a)(i)]. During the investigation, "the preferred practice is to request a parent's. . . permission to interview the child." [RCW 26.44.030(14((a)(1)] The investigator must determine whether the child wishes a third party to be present. [RCW 26.44.030(14)(a)(1)]. RCW 26.44.100(2) guides investigators primarily as to how to provide notification of a child abuse allegation and what to include in their report once they complete the investigation.

RCW 26.44.030 does not state, or even suggest, that suppression is the appropriate remedy for a violation. The legislature adopted RCW 26.44 to protect children from child abuse. We cannot assume that the legislature would intend a court to suppress evidence that might establish abuse was occurring because of a guideline violation. Ho cites no authority for her contrary position. We assume that counsel searched and found none. We reject this claim.

Ho also fails to establish that RCW 26.44.100 was violated because this statute contains no requirement that the parents be advised about their due process rights when a child abuse allegation is investigated. We reject Ho's argument.

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

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BRIEF NOTES REGARDING MARCH 2019 UNPUBLISHED WASHINGTON COURT OF APPEALS OPINIONS ON SELECT LAW ENFORCEMENT ISSUES

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

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

In March 2019, four unpublished Court of Appeals opinions fit these 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 case results.

1. State v. Rodney Eugene Mans: On March 11, 2019, Division One of the COA rules for the defendant in his appeal from a King County Superior Court conviction for *unlawful possession of methamphetamine*. The Court of Appeals rules that a **Terry stop was not justified by reasonable suspicion**. Two officers were involved in the stop of a suspect, and their testimony was described by the Court of Appeals as being somewhat in conflict. The Court of Appeals concludes that at the point when the officers ordered the suspect to stop (which constitutes a seizure), they had observed only that the suspect looked "shocked" to see the police and tossed down a bindle. The Court declares that the officers were investigating possession of drugs, and that any claim of investigating littering would be pretextual. The fact that the suspect initially tried to run away could not be considered on the reasonable suspicion issue because he attempted to flee after the officers had made their seizure by ordering him to stop. Note that under the Washington constitution an order to stop is a seizure even if the person does not obey. See State v. Young, 135 Wn.2d 498 (1998). On the other hand, under the federal constitution, no seizure occurs in this circumstance until the person complies with the order to stop or the person otherwise is physically seized. See California v. Hodari D., 499 U.S. 621 (1991).

2. State v. Terrell Rakai Wall: On March 11, 2019, Division One of the COA rules for the State in rejecting the appeal of defendant from Pierce County Superior Court convictions for *one count of first degree burglary and two counts of second degree assault*. The Court of Appeals rules: (1) that the trial court did not abuse its discretion in **admitting some parts of a doctor's**

patient-history testimony under the medical diagnosis hearsay exception, and (2) that while the trial court abused its discretion in admitting some other parts of a doctor's patient-history testimony, this **error was harmless** in light of the admissible evidence in the case.

3. State v. Gaspar Ortiz-Ortiz: On March 11, 2019, Division One of the COA rules for the State in rejecting the appeal of defendant from his Whatcom County Superior Court conviction for **voyeurism**. The Court of Appeals rules that the **Independent Source exception to the Exclusionary Rule** applies to make a search under an otherwise valid and supported, narrowly written second warrant lawful, even though a first warrant (to search for up-skirt and other pictures on a cell phone) had been found to violate the particularity requirement of the Fourth Amendment. The Court of Appeals explains that the second search warrant, which was prepared after the first search warrant was found by a court to have been too broadly written, was not based on anything discovered in the search under the first warrant..

4. State v. Marco A. Espinosa: On March 12, 2019, Division Three of the Court of Appeals rejects the defendant's appeal from his Yakima County Superior Court convictions for *three counts of first degree child molestation*. The Court of Appeals rules that the trial court did not abuse its discretion in **finding child witnesses to be competent.**

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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 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. Officers are urged to discuss issues with their agencies' legal advisors and their local prosecutors. The Legal Update is published as a research source only and does not purport to furnish legal advice. Mr. Wasberg's email address is jrwasberg@comcast.net. His

cell phone number is (206) 434-0200. The initial monthly Legal Update was issued for January 2015. Mr. Wasberg will electronically provide back issues on request.

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

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

Many United States Supreme Court opinions can be accessed at [http://supct.law.cornell.edu/supct/index.html]. This website contains all U.S. Supreme Court opinions issued since 1990 and many significant opinions of the Court issued before 1990. Another website for U.S. Supreme Court opinions is the Court's own website at [http://www.supremecourt.gov/opinions/opinions.html]. Decisions of the Ninth Circuit of the U.S. Court of Appeals since September 2000 can be accessed (by date of decision or by other search mechanism) by going to the Ninth Circu it 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 Online Training is [https://fortress.wa.gov/cjtc/www/led/ledpage.html].

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