LEGAL UPDATE FOR WASHINGTON LAW ENFORCEMENT

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

APRIL 2022

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UNITED STATES SUPREME COURT

CIVIL RIGHTS ACT CIVIL LIABILITY FOR LAW ENFORCEMENT UNDER SECTION 1983: PLAINTIFF MAY SUE LAW ENFORCEMENT FOR MALICIOUS PROSECUTION BASED ON THE FOURTH AMENDMENT WHERE THE CRIMINAL PROSECUTION THAT AROSE FROM THE CHALLENGED LAW ENFORCEMENT ACTIONS ENDED WITHOUT A CONVICTION

In Thompson v. Clark, 142 S.Ct. 1332 (April 4, 2022), the U.S. Supreme Court rules 6-3 in favor of a Plaintiff suing law enforcement for malicious prosecution based on the Fourth Amendment. The Majority Opinion asserts that a Plaintiff is not barred from bringing a section 1983 Civil Rights Acts suits for Fourth Amendment-based malicious prosecution if the alleged violation resulted in a prosecution if that prosecution was terminated favorably for the Plaintiff. The Thompson Majority Opinion appears to conclude that where a criminal prosecution arose from law enforcement actions and ended without a conviction, the case presents are a "favorable termination," and a Fourth Amendment-based lawsuit can be pursued.

The Majority Opinion's three introductory paragraphs summarize the Court's ruling as follows:

> Larry Thompson was charged and detained in state criminal proceedings, but the charges were dismissed before trial without any explanation by the prosecutor or judge. After the dismissal, Thompson alleged that the police officers who initiated the criminal proceedings had "maliciously prosecuted" him without probable cause. Thompson sued and sought money damages from those officers in federal court. As relevant here, he advanced a Fourth Amendment claim under 42 U. S. C. §1983 for malicious prosecution.
>
> To maintain that Fourth Amendment claim under §1983, a plaintiff such as Thompson must demonstrate, among other things, that he obtained a favorable termination of the underlying criminal prosecution. This case requires us to flesh out what a favorable termination entails. Does it suffice for a plaintiff to show that his criminal prosecution ended without a conviction? Or must the plaintiff also demonstrate that the prosecution ended with some affirmative indication of his innocence, such as an acquittal or a dismissal accompanied by a statement from the judge that the evidence was insufficient?
>
> We conclude as follows: To demonstrate a favorable termination of a criminal prosecution for purposes of the Fourth Amendment claim under §1983 for malicious prosecution, a plaintiff need only show that his prosecution ended without a conviction. Thompson satisfied that requirement in this case. We therefore reverse the judgment of the U. S. Court of Appeals for the Second Circuit and remand for further proceedings consistent with this opinion.

[Citation omitted; emphasis in original]

The Majority Opinion identifies some legal issues that may be litigated on remand, including whether Thompson was seized for Fourth Amendment purposes, whether Officer Clark had probable clause, and whether Officer Clark is entitled to qualified immunity on the malicious prosecution theory.

The Dissenting Opinion by Justice Alito (joined by Justices Thomas and Gorsuch) criticizes the Majority Opinion for creating a strange constitutional tort that combines the "very different"

claims of Fourth Amendment unreasonable seizure and common-law malicious prosecution. Alito argues that logic and the Supreme Court's precedents do not support the new constitution tort, which he says will lead to confusion in the lower courts. He notes that the Fourth Amendment allows for constitutional claims for false arrest, excessive force, and unlawful entry — which the Plaintiff asserted and lost at trial.

Result: Reversal of judgment of Second Circuit of the U.S. Court of Appeals that dismissed the lawsuit by Thompson against the officers who arrested him, one of whom filed a criminal complaint, leading to criminal proceedings that were ultimately dismissed without explanation by the prosecutor or the judge; case remanded for further proceedings, including possible motions to dismiss on other grounds.

U.S. SUPREME COURT IS REVIEWING A NINTH CIRCUIT RULING THAT HELD THAT A MIRANDA VIOLATION CAN RESULT IN CIVIL RIGHTS ACT SECTION 1983 CIVIL LIABILITY FOR LAW ENFORCEMENT

On April 20, 2022, in a case now captioned Vega v. Tekoh (Docket No. 21-499), the U.S. Supreme Court heard oral argument in a Civil Rights Act section 1983 civil liability case. The Supreme Court is reviewing a Ninth Circuit U.S. Court of Appeals decision in Tekoh v. County of Los Angeles, 985 F.3d 713 (9th Cir., January 15, 2021). The Ninth Circuit's January 15, 2021 Majority Opinion concluded that the mere failure in a custodial interrogation to give Miranda warnings can provide grounds for a Fifth Amendment-based Civil Rights Act section 1983 lawsuit where the un-Mirandized statement was introduced at a criminal trial, and the jury acquitted the defendant in the criminal trial.

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NINTH CIRCUIT OF THE UNITED STATES COURT OF APPEALS

IN A CRIMINAL CASE, NINTH CIRCUIT RULES THAT OFFICERS ARE AUTOMATICALLY AUTHORIZED UNDER THE FOURTH AMENDMENT TO TAKE A REASONABLE PERIOD OF TIME TO CHECK A DRIVER'S CRIMINAL HISTORY DURING A TRAFFIC STOP; THIS IS BECAUSE A RECORDS CHECK FOR THIS REASON IS INHERENTLY RELATED TO OFFICER SAFETY AND THEREFORE DOES NOT REQUIRE INDEPENDENT REASONABLE SUSPICION OF A CRIME TO JUSTIFY EXTENDING THE DURATION OF THE STOP FOR THIS PURPOSE

In U.S. v. Hylton, ___ F.4th ___ , 2022 WL ___ (9th Cir., April 5, 2022), a three-judge Ninth Circuit panel explains, based on the U.S. Supreme Court's decision in Rodriguez v. United States, 575 U.S. 348, 354 (2015), that taking a reasonable period of additional time to check on a driver's criminal history during a traffic stop does not require that law enforcement have reasonable suspicion of a separate crime to justify briefly extending the duration of the stop:

> A traffic violation seizure "justifies a police investigation of that violation." Rodriguez v. United States, 575 U.S. 348, 354 (2015). A routine traffic stop is more analogous to a Terry stop "than to a formal arrest," and it "can become unlawful if it is prolonged beyond the time reasonably required to complete the mission of issuing a" ticket for the violation. Rodriguez, at 354–55. "[T]he tolerable duration of police inquiries in the traffic-stop

context is determined by the seizure's 'mission'—to address the traffic violation that warranted the stop and attend to related safety concerns." Rodriguez, at 354 . . . .

The government's interest in officer safety "stems from the mission of the stop itself" because "[t]raffic stops are especially fraught with danger to police officers, so an officer may need to take certain negligibly burdensome precautions in order to complete his mission safely." Rodriguez, at 356. In making this observation, the Supreme Court cited favorably to a Tenth Circuit case, . . . which it characterized as "recognizing officer safety justification[s] for criminal record and outstanding warrant checks." Rodriguez, at 356.

Given the Supreme Court's reliance on this principle, it is unsurprising that several other circuits have held that criminal history checks are permissible post-Rodriguez. [Here, the Ninth Circuit Opinion in Hylton cites and provides information regarding post-Rodriguez decisions from five other federal circuit courts.]

[Defendant] Hylton argues that we should ignore this caselaw because we are required by United States v. Evans, 786 F.3d 779 (9th Cir. 2015), to hold that the criminal history check was a prolongation of the stop and needed to be supported by independent reasonable suspicion. We disagree.

Evans concerned a "felon registration check," which is a computer check to see if a person is properly registered as a felon in Nevada per state law. Because such a check is "unrelated to the traffic violation," we held in Evans that it cannot lawfully "prolong[] the traffic stop . . . unless there was independent reasonable suspicion." But a felon registration check only occurs after the officers know whether the person they pulled over is a felon. Whether a felon is properly registered is less related to officer safety than whether someone is a felon at all. That's why a felon registration check is "a measure aimed at detecting evidence of ordinary criminal wrongdoing," but a criminal history check is supported by an "officer safety justification." Rodriguez, 575 U.S. at 355–56 (cleaned up).

It's true that in a footnote in Evans, citing two cases from other circuits, we noted that other "courts [have] observed that extending traffic stops to perform criminal history checks may be unlawful." But that observation is not controlling here for two reasons. First, we have never otherwise held or suggested that criminal history checks are unlawful. And second, these two out-of-circuit cases . . . preceded Rodriguez, which "recogniz[ed] [the] officer safety justification for criminal record . . . checks." 575 U.S. at 356 (citation omitted).

Having rejected Hylton's Evans argument, we join our sister circuits and hold that because a criminal history check "stems from the mission of the stop itself," it is a "negligibly burdensome precaution[]" necessary "to complete [the stop] safely." The officers thus did not need independent reasonable suspicion to perform the criminal history check.

[Some citations omitted, others revised for style]

Result: Affirmance of U.S. District Court (Nevada) convictions of Anthony Delano Hylton, Jr., for two counts of armed bank robbery and two counts of using a firearm during a crime of violence.

CIVIL RIGHTS ACT SECTION 1983 CIVIL LIABILITY FOR CORRECTIONS UNDER THE EIGHTH AMENDMENT: NINTH CIRCUIT MAJORITY OPINION (1) REVERSES PART OF A U.S. DISTRICT COURT GRANT OF SUMMARY JUDGMENT TO LAW ENFORCEMENT BASED ON PLAINTIFF-ESCAPEE'S ALLEGATIONS THAT, AFTER HE HAD ALREADY BEEN CAPTURED AND HANDCUFFED, HE WAS (A) PUNCHED BY AN OFFICER AND (B) BITTEN BY A K-9; (2) AFFIRMS PART OF A SUMMARY JUDGMENT RULING FOR LAW ENFORCEMENT BASED ON BODYCAM VIDEO-AUDIO BECAUSE THAT EVIDENCE BLATANTLY CONTRADICTS THE PLAINTIFF-ESCAPEE'S ALLEGATIONS AS TO (A) HIS WOULD-BE ATTEMPT TO SURRENDER AND (B) THE DURATION OF THE APPLICATION OF FORCE UP TO THE POINT WHEN HE WAS HANDCUFFED; DISSENTING OPINION WOULD HAVE GRANTED SUMMARY JUDGMENT IN FULL

In Hughes v. Rodriquez, ___ F.4th ___ , 2022 WL ___ (9th Cir., April 20, 2022), a three-judge Ninth Circuit panel in a section 1983 Civil Rights Act lawsuit alleging excessive force grants partial relief to a Plaintiff from a U.S. District Court grant of full summary judgment to law enforcement defendants. The Plaintiff's lawsuit alleges that the law enforcement defendants used excessive force in apprehending him after he escaped from a San Joaquin County Jail highway work crew and lived on the lam for three weeks.

Factual assumptions for purposes of summary judgment review

Ordinarily, when law enforcement defendants argue that there is no factual basis for a section 1983 Civil Rights Act excessive force lawsuit, the courts assume for purposes of review that the Plaintiff's allegations of excessive force are true. All doubts regarding the facts are resolved in favor of the Plaintiff.

However, in Scott v. Harris, 550 U.S. 372, 378 (2007), the U.S. Supreme Court held that courts may properly view the facts in the light depicted by patrol car video footage and its accompanying audio if the footage and audio blatantly contradict testimonial evidence. In this case, the Majority Opinion concludes that the same standard applies to video and audio bodycam evidence that blatantly contradicts a plaintiff's allegations. In the Hughes decision, the Majority Opinion concludes that the bodycam footage does blatantly contradict the Plaintiff's allegations in some respects, but it does not blatantly contradict his allegations in other respects.

The Majority Opinion thus concludes that the bodycam evidence did blatantly disprove Plaintiff's claims (1) that he tried to surrender prior to the application of force, and (2) that the application of force went on for over two minutes. However, the Majority Opinion concludes that the bodycam evidence could be interpreted as supporting or not supporting the Plaintiff's claims that, after he had been handcuffed, he was unreasonably (1) punched by an officer and (2) bitten by a police canine.

Eighth Amendment vs. Fourth Amendment excessive force standards

The Majority Opinion next considers (1) whether there was a violation of a constitutional right; and (2) whether that right was clearly established at the time of the officer's alleged misconduct.

Because the Eighth Amendment applies equally to convicted prisoners inside or outside the walls of the penal institution, the panel analyzes Plaintiff's claim of excessive force under the Eighth Amendment, not the Fourth Amendment. The Eighth Amendment standard is a bit less demanding on law enforcement that the Fourth Amendment standard, but the Majority Opinion

nonetheless concludes that law enforcement violated the Eighth Amendment excessive force standard when viewing the post-handcuffing allegations of Plaintiff in the best light for Plaintiff.

Briefly noted, the Fourth Amendment standard under Graham v. Connor, 489 U.S. 378 (1989) and subsequent case law considers the following non-exhaustive list of factors for determining when an officer's use of force is objectively reasonable: (1) the severity of the crime at issue, (2) whether the suspect poses an immediate threat to the safety of the officers or others, and (3) whether the suspect is actively resisting arrest or attempting to evade arrest by flight.

Under the Eighth Amendment, the overarching question is whether force was applied in a good-faith effort to maintain or restore discipline, or instead the force was maliciously and sadistically applied in order to harm the person. See Whitley v. Albers, 475 U.S. 312 (1986); Hudson v. McMillian, 503 U.S. 1, 7 (1992). The Ninth Circuit cases rely on these U.S. Supreme Court precedents and their progeny to apply a five-factor test to determine whether, despite any claims of subjective good faith by government actors, the use of force was malicious and sadistic: (1) the extent of injury suffered by an inmate; (2) the need for application of force; (3) the relationship between that need and the amount of force used; (4) the threat reasonably perceived by the responsible officials; and (5) any efforts made to temper the severity of the forceful response.

Majority Opinion's conclusion regarding application of the excessive force standard under the Eighth Amendment

The Majority Opinion in Hughes concludes that, while the initial use of a dog was clearly proportional to the threat posed by the non-surrendering Plaintiff before he was handcuffed, the jury must resolve factual questions of whether: (1) the alleged post-handcuff punching and dog-biting occurred; and (2) whether, if these applications of force occurred, they were proportional to the threat reasonably perceived by the officers.

The Majority Opinion further holds that the officer who allegedly punched a handcuffed Plaintiff is not entitled to qualified immunity under section 1983, assuming the truth of Plaintiff's allegations. Qualified immunity is denied because case law had previously clearly established that beating and allowing K-9 biting of a handcuffed convict in these alleged circumstances violates the Eighth Amendment.

The Majority Opinion further concludes that the excessive force claims against the other officers, based on theories of failure to intervene and failure to intercede, fail as a matter of law. Based on the bodycam evidence, the alleged punching and biting took place during the rapidly unfolding chaos of the physical struggle to apprehend Hughes. The other officers cannot be held liable for fleeting acts that they did not commit, that came without warning, and that they could not have prevented.

Dissenting Opinion

The Dissenting Opinion by Judge Vitaliano argues that the bodycam evidence blatantly contradicts all of the Plaintiff's claims of excessive force. This includes the Plaintiff's claims of post-handcuffing punching and dog-biting. In the assessment of the dissenting Ninth Circuit judge (with whom the Majority Opinion expressly does not agree), the bodycam evidence regarding timing of words uttered and the timing of the sound of clicking of handcuffs blatantly contradict the Plaintiff's claims of punching and dog-biting after Plaintiff had been handcuffed.

IN A CRIMINAL CASE, A CHILD PORNOGRAPHY AND CHILD EXPLOITATION DEFENDANT LOSES HIS FOURTH AMENDMENT ARGUMENT THAT THE CONDUCT OF FACEBOOK AND YAHOO IN SEARCHING HIS ACCOUNTS ARE ACTIONS ON BEHALF OF THE FEDERAL GOVERNMENT IN LIGHT OF FEDERAL STATUTES

In U.S. v. Rosenow, ___ F.4th ___ , 2022 WL ___ (9th Cir., March 27, 2022), a 3-judge Ninth Circuit panel rejects the Fourth Amendment arguments of defendant that he tied to conduct of Facebook and Yahoo in searching his accounts for illegal conduct. Defendant unsuccessfully argued that federal statutes addressing Yahoo and Facebook monitoring of online accounts made Yahoo and Facebook agents of the federal government,and made their actions warrantless searches in violation of the Fourth Amendment.

The panel's Opinion affirms defendant's convictions for federal criminal offenses under federal statutes prohibiting child sexual exploitation and child pornography. A Ninth Circuit staff summary (which is not part of the Ninth Circuit Majority Opinion or Dissenting Opinion) provides the following synopsis of the Majority Opinion:

> The panel affirmed a conviction and sentence on one count of attempted sexual exploitation of a child, 18 U.S.C. § 2251(c), and one count of possession of sexually explicit images of children, 18 U.S.C. § 2252(a)(4)(B), in a case in which the defendant was arrested returning from the Philippines, where he engaged in sex tourism involving minors.
>
> The defendant arranged these illegal activities through online messaging services provided by electronic service providers (ESPs) Yahoo and Facebook. His participation in foreign child sex tourism was initially discovered after Yahoo investigated numerous user accounts that Yahoo suspected were involved in child exploitation.
>
> The defendant argued that the evidence seized from his electrical devices upon his arrest should have been suppressed because Yahoo and Facebook were acting as government agents when they searched his online accounts. The panel rejected the defendant's arguments (1) that two federal statutes—the Stored Communications Act and the Protect Our Children Act—transformed the ESPs' searches into governmental action, and (2) that the government was sufficiently involved in the ESPs' searches of the defendant's accounts to trigger Fourth Amendment protection.
>
> The defendant argued that he had a right to privacy in his digital data and that the government's preservation requests and subpoenas, submitted without a warrant, violated the Fourth Amendment. The panel disagreed.
>
> The panel held (1) the government's requests pursuant to 18 U.S.C. § 2703(f) that Yahoo preserve records related to the defendant's private communications did not amount to an unreasonable seizure; and (2) the defendant did not have a legitimate expectation of privacy in the limited digital data sought in the government's subpoenas, where the subpoenas did not request any communication content from the defendant's accounts and the government did not receive any such content in response to the subpoenas.
>
> The defendant argued that the government's search warrant affidavit failed to establish probable cause because it did not include any images of child pornography or any

> reasonable factual descriptions of such images. Rejecting this argument, the panel concluded that the affidavit—which described Yahoo's internal investigation and the resulting findings, as well as the information Facebook provided to the National Center for Missing and Exploited Children after searching the defendant's accounts—established a fair probability that child pornography would be found on the defendant's electronic devices.

The Ninth Circuit staff summary provides the following synopsis of the Dissenting Opinion in the Rosenow case:

> Judge Graber dissented only as to the question whether, in conducting its searches of the defendant's chat messages, Yahoo was acting as an instrument or agent of the government. Judge Graber applied the two-part test set forth in United States v. Young, 153 F.3d 1079 (9th Cir. 1998) (per curiam).
>
> As to the first prong, [Judge Graber] wrote that the government knew of and acquiesced in Yahoo's intrusive conduct, and [Judge Graber] rejected the suggestion that this prong would be met only if Yahoo's conduct had been illegal. As to the second prong, [Judge Graber] wrote that Yahoo's motivation to conduct the searches was intertwined with, and dependent on, the government's enforcement of criminal laws.

Result: Affirmance of U.S. District Court (Southern District of California) convictions for one count of attempted sexual exploitation of a child, 18 U.S.C. § 2251(c), and one count of possession of sexually explicit images of children, 18 U.S.C. § 2252(a)(4)(B).

IN A FEDERAL PROSECUTION FOR POSSESSING CHILD PORNOGRAPHY, UNDER THE FOURTH AMENDMENT'S DOCTRINE REGARDING SEARCHES BY PRIVATE PERSONS, A DETECTIVE DID NOT NEED A WARRANT TO SUPPORT HIS VIEWING OF IMAGES THAT DEFENDANT'S EX-FIANCÉE HAD ALREADY VIEWED ON DEFENDANT'S LAPTOP; NOTE, HOWEVER, THAT UNDER THE 2008 INTERPRETATION OF THE WASHINGTON CONSTITUTION IN STATE V. EISFELDT, SUCH WARRANTLESS VIEWING WOULD BE HELD UNLAWFUL IN A WASHINGTON PROSECUTION

In U.S. v. Phillips, ___ F.4th ___ , 2022 WL ___ (9th Cir., April 29, 2022), a 3-judge Ninth Circuit panel affirms a judgment of conviction in a case in which defendant entered a conditional guilty plea to possession of child pornography, reserving the right to appeal the denial of his motion to suppress evidence found on his laptop computer.

After calling off her engagement to defendant Phillips, his ex-fiancée discovered child pornography on his computer, which she then brought to the Washoe County (Nevada) Sheriff's Office. While she was there, a detective asked her to show him only the images that she had already viewed when she had accessed the laptop by herself. She complied with that request, and the lawfulness of the detective's warrantless viewing of those images became an issue in the case.

Applying the U.S. Supreme Court precedent of United States v. Jacobsen, 466 U.S. 109 (1984), the Ninth Circuit panel in Phillips holds that the detective's search was permissible because the detective did not go beyond the scope of the ex-fiancée's earlier private search.

Result: Affirmance of U.S. District Court (Nevada) conviction of Daren W. Phillips for possession of child pornography in violation of federal law.

LEGAL UPDATE EDITOR'S COMMENT: In light of the Washington Supreme Court's ruling in State v. Eisfeldt, 163 Wn.2d 628 (2008), a Washington officer in these circumstances hoping to develop a case for prosecution in the Washington courts should not immediately ask to be shown the images on the computer. Instead, the officer would need to assess in interviewing the witness whether the observations by the witness provide probable cause that the laptop contains child pornography. If the answer is yes, then the officer would be authorized to seize the laptop and act with due diligence in applying for a search warrant for the laptop.

In Eisfeldt, the Washington Supreme Court held, in an independent grounds reading of the Washington constitution's article I, section 7, that a government agent may not conduct a warrantless search of the area that was searched by a private individual. The Washington Supreme Court reasoned in Eisveldt that the privacy interest protected by the Washington constitution survives the exposure that occurs when it is intruded upon by a private actor. In other words, an individual's privacy interest under the Washington constitution is not extinguished simply because a private actor has actually intruded upon the privacy interest.

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WASHINGTON STATE SUPREME COURT

GUN-OWNER PLAINTIFFS WIN ON GROUNDS OF STATUTORY PREEMPTION (RCW 9.41.290) THEIR CHALLENGE TO A CITY OF EDMONDS ORDINANCE THAT MAKES IT AN INFRACTION TO STORE UNLOCKED ANY FIREARM AND TO ALLOW ACCESS TO SUCH A FIREARM BY OTHERS NOT PERMITTED BY LAW TO POSSESS A FIREARM

In Bass v. City of Edmonds, ___ Wn.2d ___ , 2022 WL ___ (April 21, 2022), the Washington Supreme Court is unanimous in ruling that RCW 9.41.290 preempts and therefore does not allow a City of Edmonds ordinance making it a civil infraction to store unlocked any firearm and to allow access to such a firearm by children or others not permitted by law to possess it. The Supreme Court Opinion explains that not every local ordinance that touches in some way on firearms is preempted by RCW 9.41.290, but that ordinances that regulate firearms, such as the City of Edmonds ordinance at issue, are preempted.

RCW 9.41.290 provides that following language of State preemption of firearms laws regulation:

> The state of Washington hereby fully occupies and preempts the entire field of firearms regulation within the boundaries of the state, including the registration, licensing, possession, purchase, sale, acquisition, transfer, discharge, and transportation of firearms, or any other element relating to firearms or parts thereof, including ammunition and reloader components. Cities, towns, and counties or other municipalities may enact only those laws and ordinances relating to firearms that are specifically authorized by state law, as in RCW 9.41.300, and are consistent with this chapter. Such local ordinances shall have the same penalty as provided for by state law. Local laws and ordinances that are inconsistent with, more restrictive than, or exceed the requirements of state law shall not be enacted and are preempted and repealed, regardless of the

nature of the code, charter, or home rule status of such city, town, county, or municipality.

In key part, the legal analysis of the preemption issue in the Majority Opinion is as follows:

> While the legislature's intent to occupy the entire field of firearm regulation is clear, not every municipal action that touches on firearms is within that field. For example, RCW 9.41.290 does not prevent a municipality from barring its employees from carrying concealed weapons while on duty. See Cherry v. Municipality of Metropolitan Seattle, 116 Wn.2d 794, 800 (1991). After reviewing relevant legislative history, this court concluded that "the Legislature . . . sought to eliminate a multiplicity of local laws relating to firearms and to advance uniformity in criminal firearms regulation" and that "[t]he 'laws and ordinances' preempted are laws of application to the general public." Id. at 801. Since the personnel policy was not a law of general application, it was not preempted by the statute.
>
> Similarly, RCW 9.41.290 did not prevent a city from imposing strict rules on a gun show held at a municipal convention center. See Pac. Nw. Shooting Park Ass'n v. City of Sequim, 158 Wn.2d 342, 356-57 (2006). Not only were the restrictions not laws of general application, cities have specific statutory authority to regulate gun possession in municipal convention centers and general proprietary authority to limit how their convention centers could be used. 158 Wn.2d at 355-56 (citing RCW 9.41.300) . . . . Accordingly, the city could impose the rules.
>
> Not all rules of general application that touch on firearms are preempted by RCW 9.41.290. For example, RCW 9.41.290 does not prevent a city from taxing firearms and ammunition. [Watson v. City of Seattle, 189 Wn.2d 149 (2017)]. While we acknowledge that some regulations could masquerade as taxes, the Watson plaintiffs failed to show that the particular tax was a regulation. Since RCW 9.41.290 preempted only firearm regulations, not taxes, the [City of Seattle] tax was not preempted.
>
> Similarly, the Court of Appeals found that RCW 9.41.290 did not preempt a county ordinance requiring shooting facilities to obtain operating permits. Kitsap County v. Kitsap Rifle & Revolver Club, 1 Wn. App. 2d 393, 399, 405 P.3d 1026 (2017). The court noted that on its face, the preemption statute did not reference regulating shooting facilities. The court also noted that the ordinance "impose[d] requirements only on owners and operators of shooting facilities, not on the individuals who discharge firearms at those facilities." The court also noted (among many other things) that the legislature had explicitly given municipalities the power to "enact ordinances restricting the discharge of firearms 'where there is a reasonable likelihood that humans, domestic animals, or property will be jeopardized.'" (quoting RCW 9.41.300(2)(a)).
>
> Taken together, these cases establish that RCW 9.41.290 broadly preempts local ordinances that directly regulate firearms themselves, but not necessarily ordinances that have an incidental effect on the use and enjoyment of firearms or exercises of municipal authority that do not establish rules of general application to the public.
>
> The city argues that the legislature intended only to preempt regulation in the nine statutorily enumerated areas: "registration, licensing, possession, purchase, sale, acquisition, transfer, discharge, and transportation of firearms." RCW 9.41.290. But the preemption statute begins with "[t]he state of Washington fully occupies and preempts

> the entire field of firearms regulation." Given that broad introductory phrase, we conclude the list is illustrative, not exclusive.
>
> . . . .
>
> The legislature plainly meant to broadly preempt local lawmaking concerning firearms except where specifically authorized in chapter 9.41 RCW or other statutes. The city was acting in its regulatory, not proprietary, role and without the sort of explicit or necessarily implied authorization present in [certain of the cases discussed above]. Nor was the city acting as an employer as in Cherry. Accordingly, we hold that this ordinance is preempted by state law.

[Some citations omitted, others revised for style]

Result: Affirmance of Division One Court of Appeals decision that affirmed a Snohomish County Superior Court order permanently enjoining the City of Edmonds from enforcing the City's locked storage requirement for guns.

STATE HELD TO HAVE COMMITTED BRADY VIOLATIONS BY NOT PROVIDING TO THE DEFENDANT INFORMATION ABOUT A CODEFENDANT-WITNESS'S JAIL DISCIPLINARY INFRACTIONS, HER POSSIBLE MENTAL HEALTH ISSUES IN JAIL, AND A JAILER'S NOTE DESCRIBING HER AS UNTRUSTWORTHY; BUT, IN LIGHT OF OTHER EVIDENCE IN THE CASE, THE BRADY VIOLATIONS ARE HELD TO NOT REQUIRE REVERSAL OF CONVICTIONS

In Personal Restraint Petition of Mulamba, ___ Wn.2d ___ , 2022 WL ___ (April 28, 2022), the Washington Supreme Court rules that under the totality of the circumstances of this case, the Kittitas County Prosecutor's Office committed a violation of Brady v. Maryland, 373 U.S. 83 (1963) by not providing to the defendant information about a codefendant-witness's jail disciplinary infractions, her possible mental health issues in jail, and a jailer's note describing her as untrustworthy. The Supreme Court does not create a blanket rule under Brady for all such jail evidence concerning witnesses, but the Court holds that in this case the State was responsible for obtaining the jail evidence and for providing it to the defendant.

An 8-1 majority of the Supreme Court rules, however, that in light of the other trial evidence of defendant's guilt, the Brady violation does not require setting aside defendant's convictions. The Majority Opinion asserts that this result is justified because "the undisclosed Brady material did not establish a reasonable probability that the trial would have turned out differently had the material been disclosed." A lone dissent by Justice Cheryl Gordon McCloud argues that the convictions should have been set aside because the undisclosed Brady material does establish a reasonable probability that the trial would have turned out differently had the material been disclosed.

Result: Defendant Ruben Dennis Mulamba is denied relief on his Personal Restraint Petition relating to his 2012 Kittitas County Superior Court convictions for first degree assault of a child, second degree assault of a child, first degree criminal mistreatment of a child, and third degree criminal mistreatment of a child.

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WASHINGTON STATE COURT OF APPEALS

MAN WHO WAS SHOT BY POLICE LOSES HIS NEGLIGENCE-BASED CLAIM THAT, IN EFFECT, SUGGESTS THAT POLICE SHOULD HAVE UNCONSTITUTIONALLY FORCED ENTRY INTO HIS HOME AND DETAINED HIM DURING AN EARLIER ENCOUNTER; HIS UNSUCCESSFUL ARGUMENT IS ESSENTIALLY THAT AN EARLIER DETENTION UNDER THE INVOLUNTARY TREATMENT ACT [ITA] OR UNDER A NON-EMERGENCY ORDER FOR INITIAL DETENTION [NED ORDER] WOULD HAVE PREVENTED HIS SUBSEQUENT DANGEROUS ARMED BEHAVIOR THAT JUSTIFIED POLICE SHOOTING HIM

In Ghodsee v. City of Kent, ___ Wn. App. 2d ___ , 2022 WL ___ (Div. I, April 18, 2022), the Court of Appeals considers several arguments by a civil lawsuit plaintiff who challenged the dismissal by the King County Superior Court of his negligence-based lawsuit against the City of Kent (Kent PD) and the King County Crisis and Commitment Services (KCCCS). Plaintiff Ghodsee was shot by Kent Police Department (KPD) officers when he initiated the action by pointing a rifle at them. He is seeking to hold Kent PD and KCCCSS liable for his injuries in the shooting based on his theory that he should have been detained under a non-emergency detention order for his dangerous behavior in an encounter about one week prior to the shooting.

The Court of Appeals describes the facts in the case as follows:

> On Friday, June 23, 2017, Shahrbanoo Ghodsee contacted King County Crisis and Commitment Services (KCCCS) with concerns about her son, Sina Ghodsee. Shahrbanoo reported Ghodsee was not taking his medication, was "agitated" and "delusional," and she had left the home to stay elsewhere.
>
> Four days later [Tuesday, June 27], a "Designated Mental Health Professional" (DMHP) [under current law, they are referred to as "designated crisis responders"] called to schedule an appointment for a team of DMHPs to meet with Shahrbanoo at the Ghodsee home. The DMHPs intended to interview Ghodsee pursuant to the involuntary treatment act (ITA), but were unsuccessful and eventually left the home after Ghodsee pointed "what appeared to be a table leg at [them] like a gun." They called the police; officers from the Kent Police Department (KPD) responded and attempted to make contact with Ghodsee, but were similarly unsuccessful and disengaged. [Court's footnote 4: *KPD reported Ghodsee swung a skateboard at them "like a bat" when an officer attempted contact.*]
>
> On Thursday, June 29, a DMHP filed a Petition for Initial Detention (Non-Emergency) in King County Superior Court, which [NED order] the court granted.
>
> On Friday, June 30 and again on Saturday, July 1, a team of DMHPs and several officers from KPD went back to the Ghodsee home but were ultimately unable to detain Ghodsee. On Sunday, July 2, KPD was dispatched to the Ghodsee home after a neighbor called law enforcement concerned that Ghodsee was threatening someone and possibly carrying a rifle. The caller could not state with any certainty that he saw a gun, and KPD never observed a crime, so the officers eventually left without attempting to contact Ghodsee.
>
> The next week, on Friday, July 7, KPD officers formulated a plan to take Ghodsee into custody when he left his home to get groceries or cigarettes. Around midnight on July 9,

> the manager at a local grocery store called KPD to inform them Ghodsee was on site, but by the time officers arrived Ghodsee had left.
>
> On Monday, July 10, KPD received two emergency calls from Ghodsee's neighbors, reporting Ghodsee had shot at the neighbor's occupied home. KPD responded and saw Ghodsee in the window of his home with a rifle raised, pointed in the direction of the officers. Two officers simultaneously fired, and Ghodsee disappeared from sight.
>
> Officers on the scene used a drone to see inside of the home, where they observed Ghodsee laying on the floor. Ghodsee was taken into custody. He sustained a gunshot wound to the head, surviving but suffering significant and life-changing injuries.

Several complex legal issues relating to law enforcement liability (including the "public duty doctrine") are discussed in the Ghodsee Opinion. This Legal Update entry will not excerpt from or attempt to summarize most of those issues. But this entry will provide some of the legal analysis by the Court of Appeals touching on how reasonable exercise of officer discretion to not take action in circumstances such as these should generally not provide grounds for a lawsuit:

> Ghodsee also argues KPD breached its duty of reasonable care in its direct interaction with him by failing to detain him more swiftly after the NED [Non-Emergency Detention] order was issued. His claim is essentially that, had he been detained sooner, he would not have been shot by KPD or suffered the serious injuries that resulted from the shooting.
>
> . . . .
>
> Police have a duty to exercise reasonable care when discharging their duties, including effectuating court orders. [Mancini v. City of Tacoma, 196 Wn.2d 864 (2021)] . . . . This necessarily includes the exercise of discretion by law enforcement as to how to effectuate those court orders. There is nothing in statute or in the NED order that required KPD to enforce the detention order in any particular way; the officers had discretion to determine the safest way to carry out the court's order. Their actions in effectuating the NED order were further constrained by various constitutional considerations that necessitate a flexible response based on the particular circumstances of the interaction.
>
> To expand liability of a law enforcement agency based on failure to detain pursuant to the ITA or a NED order in a particular way or within a particular timeframe would undermine the very language of the ITA itself, which seeks to safeguard individual rights. The risk that imposing liability "could encourage" law enforcement "to detain patients merely to avoid potential liability to third parties," presents a significant challenge to the individual rights of potential detainees who are protected under the ITA. . . .
>
> Importantly, the NED order only ordered Ghodsee to be detained by law enforcement. Exercising reasonable care, particularly in the constantly evolving circumstances of a mental health crisis, necessitated discretion on the part of police in terms of how that order would be carried out. The existence of the NED did not suspend Ghodsee's right to privacy in his home, for example, or to be free from search or seizure in the absence of either a warrant or applicable exception to state and federal warrant requirements. . . .

While a neighbor reported Ghodsee "was threatening some unknown individual and had a gun," when officers responded, the neighbor admitted he did not see Ghodsee "directly threatening anyone nor could he be sure he saw a firearm." The City argues that no exception to the warrant requirement applied, as there was no probable cause that a crime had occurred which would have been a prerequisite to arresting Ghodsee on that date and there were no exigent circumstances to justify entering the home.

Contrary to Ghodsee's assertion, the NED order does not function as a warrant or otherwise suspend Ghodsee's individual rights protected by warrant requirements and other constraints on the actions of law enforcement.

. . . .

Ghodsee suffered immense injuries as a result of a devastating situation. He survived a gunshot wound to the head, but suffered a traumatic brain injury and severe cognitive impairments. He may never regain full independence. We acknowledge that Ghodsee and his family have suffered, and we are aware that by affirming the trial court, his civil claim is dismissed. We, however, also recognize that responding to mental health crises necessarily requires flexibility and individualized responses.

Our state legislature has made clear that officers must retain discretion as they interact with individuals in our communities so that they may be appropriately responsive to the circumstances presented to them. SUBSTITUTE H.B. 1735, 67th Leg., Reg. Sess. (Wash. 2022).

[Court's footnote 15: *We recognize this law, passed in 2022, was inapplicable at the time of the incident. However, Ghodsee submitted the session law, in its entirety, to this court as an additional authority under RAP 10.8. While he urged this court to focus on sections 3(1)(d), 3(1)(f) and 3(5)(a)-(b), we would be remiss if we ignored the other sections which assist in our analysis. We cite to this law for its persuasive value as it sheds light on how our legislature navigates issues of de-escalation by law enforcement agencies*.]

The law recognized that specific de-escalation tactics "[d]epend[] on the circumstances," (Section 2), but also clarifies that physical force may still be used in certain circumstances, including in detaining an individual under the ITA. Our legislature has also implemented crisis intervention training requirements for law enforcement officers. See RCW 43.101.427. There are crucial policy reasons, including the very nature of mental health crises and de-escalation, to empower agencies to adapt and respond to each unique situation as it unfolds. Our legislature has directed that agencies must be able to work responsively, and be able to prioritize de-escalation. Even in amending RCW 10.120.020, the legislature acknowledged that the statute "represents national best practices." SUBSTITUTE H.B. 1735. Washington statute requires law enforcement officers to "[w]hen possible, use all de-escalation tactics that are available and appropriate under the circumstances before using physical force." RCW 10.120.020(3)(a).

When KPD made direct contact with Ghodsee on June 28, he responded in a threatening manner and the officer implemented the de-escalation technique of shielding by retreating from the home and closing the door between himself and Ghodsee. Ghodsee's argument that the officer should have been more aggressive in that moment

> so that the detention could have been completed, and thus avoiding the tragic shooting days later, runs counter to the clear policy considerations of our legislature. Officers must be empowered to continue utilizing de-escalation techniques whenever possible, as "best practices." The court did not err in granting summary judgment in favor of both the City and County.

[Some citations omitted; some footnotes omitted]

Result: Affirmance of King County Superior Court granting summary judgment to both the City of Kent and King County.

DEFENDANT'S SIXTH AMENDMENT RIGHT TO CONFRONTATION WAS NOT VIOLATED BY THE TRIAL COURT ALLOWING MOTHER AND CHILD WHO WERE BOTH IMMUNOCOMPROMISED AND INELIGIBLE FOR VACCINE TO TESTIFY BY VIDEO BASED ON HEALTH CONCERNS REGARDING EXPOSURE TO COVID-19

In State v. D.K., ___ Wn. App. 2d ___ , 2022 WL ___ (Div. I, April 6, 2022) (March 14, 2022 unpublished Opinion ordered published), a Division One panel's makes the following ruling, as summarized in the "Weekly Roundup for April 15, 2022" on the "Case Law 2022" website page of the Washington Association of Prosecuting Attorneys:

> The victim and her mother were both immunocompromised and ineligible for a vaccine at the time of trial. Their physician provided documentation to verify and concluded that the victim should not be out in public. Further, if the mother contracted COVID the victim would almost certainly contract it as well. The court also relied upon the Supreme Court of Washington's order regarding court operations during COVID. The court found sufficient facts to permit remote testimony. The [Sixth Amendment] confrontation clause does not prohibit a witness to testify by video if a substitute procedure 1) necessarily furthers an important public policy and 2) is reliable. Under the safety concerns expressed by the court, gravity of the risk, and the age of the already old case, remote testimony was reasonably necessary. There were minor issues with sound, and the defendant was off the video screen during part of the testimony. However, the video allowed the jury and the defendant to see and hear the witness. The video testimony was reliable.

Result: Affirmance of King County Superior Court (Juvenile Court) conviction of D.K. for attempted child molestation in the first degree.

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BRIEF NOTES REGARDING APRIL 2022 UNPUBLISHED WASHINGTON COURT OF APPEALS OPINIONS ON SELECT LAW ENFORCEMENT ISSUES

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

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

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

1. State v. Anthony William George, Sr.: On April 18, 2022, Division One of the COA rejects the defendant's challenge to his Grays Harbor County Superior Court convictions for: (A) *three counts of unlawful possession of a controlled substance with intent to deliver; (B) one count of possession of a controlled substance; and (C) three counts of unlawful possession of a firearm in the first degree*, except that (i) the conviction for *simple possession of a controlled substance* is vacated based on State v. Blake, 197 Wn.2d 170 (2021), and (ii) the *three convictions for unlawful possession of a controlled substance with intent to deliver are treated as the same criminal conduct and therefore as just one conviction for that offense*. Defendant loses his constitutional search-and-seizure arguments. **The court holds on those search-and-seizure arguments: (1) that the search warrant affidavit's detailed description of a controlled-buy through a CI at the defendant's residence satisfies both (1) the credibility-of-informant prong, and (2) the basis-of-information" prong of the Agular/Spinelli two-part test for informant-based probable cause – and thus established probable cause to search defendant's residence; (2) the search warrant affidavit's description of the extensive knowledge of the CI regarding illegal drug activity in the area further established the credibility of the informant; (3) the affidavit for the search warrant was not vulnerable to attack for staleness in light of the current information about the recent controlled buy in the affidavit; and (4) although oxycodone was the object of the search, the search authorization in the search warrant to search for "controlled substances" (the warrant did not mention searching for "oxycodone") meets the particularity requirement of the Fourth Amendment**.

The unpublished Opinion in George can be accessed on the Internet at:
https://www.courts.wa.gov/opinions/pdf/833090.pdf

2. State v. Timothy Charles Moreno: On April 19, 2022, Division Two of the COA rejects the defendant's challenges to his Thurston County Superior Court convictions for: (A) *unlawful possession of a controlled substance, heroin, with intent to deliver*; and (B) *unlawful possession of a controlled substance, methamphetamine, with intent to deliver*. Defendant loses his constitutional challenge to a warrant that authorized a search of the defendant's car. **The Court of Appeals rules that the search warrant affidavit satisfied the "basis of information" prong of the Agular/Spinelli two-part test for informant-based probable cause to search.** The key part of the Court's analysis on this issue is as follows:

> [Defendant] Moreno argues that the basis of knowledge prong was not satisfied, and therefore, the warrant should not have issued. But here, [the officer's] affidavit stated that the CI told him that they were "taking Moreno to the [store]" to meet with Castilla-Whitehawk, and "the plan was for Mr. Moreno to purchase . . . a few ounces of believed heroin from Whitehawk." Additionally, [the officer's affidavit] stated that the CI told him Moreno was a drug dealer, that the CI "did not . . . ever purchase or I should say recently has not purchased . . . any narcotics from Mr. Moreno, but . . . Moreno's offered narcotics to the CI on several different occasions."
>
> Because the CI had previously had conversations with Moreno about narcotics, it was reasonable to infer that Moreno was comfortable telling the CI about his drug-related activity. And because the CI was personally transporting Moreno to the location where the drug transaction was supposed to occur, the magistrate was "entitled to make [a] reasonable inference" that Moreno told the CI that the reason for the trip was to engage in the drug purchase. . . .
>
> Further, the CI knew Moreno because the CI had provided law enforcement with information about Moreno about a month prior. The trial court denied the suppression motion because "the court may take the reasonable common sense inferences from what has been stated, and it is clear from the record that it was Mr. Moreno giving [the CI] that information."

[Some paragraphing revised for readability; some of the original bracketing deleted]

The unpublished Opinion in Moreno can be accessed on the Internet at:
https://www.courts.wa.gov/opinions/pdf/D2%2054218-8-II%20Unpublished%20Opinion.pdf

3. Personal Restraint Petition of Douglas Wamba: On April 25 2022, Division One of the COA rejects the defendant's challenges in a Personal Restraint Petition to his Snohomish County Superior Court convictions for *nine counts of varying degrees of child rape and child molestation*. **The Court of Appeals rules that evidence obtained from the defendant's cell phone was admissible because (1) the evidence in the records shows that the cell phone was lawfully seized while defendant was under arrest, (2) probable cause supported a search warrant to search the seized cell phone's web browsing activity, web history, browser history and bookmark addresses, and information pertaining to relationships to other devices; and (3) the search warrant satisfied the constitutional particularity requirement when it is taken into account that the warrant affidavit was attached to the search warrant.**

The unpublished Opinion in Wamba can be accessed on the Internet at:
https://www.courts.wa.gov/opinions/pdf/823191.pdf

4. State v. Samuel David Voegele: On April 25, 2022, Division One of the COA rejects the defendant's challenges to his Whatcom County Superior Court conviction *for first degree arson*. One of the issues in the case concerns the admissibility of testimony of an eyewitness as to his pre-trial and in-court identifications of the defendant. Shortly after the crime, the eyewitness refused an officer's request that the eyewitness look at a photo montage, but the eyewitness said that he wished only to look at a single photo. The eyewitness then identified Voegele with certainty. **Considering all of the facts, including the fact that the eyewitness requested this less-than-ideal identification procedure on his own, the Voegele Court rules that the**

trial court did not abuse its discretion in determining that the law enforcement ID process used in the case did not create a substantial likelihood of irreparable misidentification.

The unpublished Opinion in Voegele can be accessed on the Internet at:
https://www.courts.wa.gov/opinions/pdf/823213.pdf

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LEGAL UPDATE FOR WASHINGTON LAW ENFORCEMENT IS ON WASPC WEBSITE

Beginning with the September 2015 issue, the most recent monthly Legal Update for Washington Law Enforcement is placed under the "LE Resources" link on the Internet Home Page of the Washington Association of Sheriffs and Police Chiefs. As new Legal Updates are issued, the three most recent Legal Updates will be accessible on the site. WASPC will drop the oldest each month as WASPC adds the most recent Legal Update.

In May of 2011, John Wasberg retired from the Washington State Attorney General's Office. For over 32 years immediately prior to that retirement date, as an Assistant Attorney General and a Senior Counsel, Mr. Wasberg was either editor (1978 to 2000) or co-editor (2000 to 2011) of the Criminal Justice Training Commission's Law Enforcement Digest. From the time of his retirement from the AGO through the fall of 2014, Mr. Wasberg was a volunteer helper in the production of the LED. That arrangement ended in the late fall of 2014 due to variety of concerns, budget constraints and friendly differences regarding the approach of the LED going forward. Among other things, Mr. Wasberg prefers (1) a more expansive treatment of the core-area (e.g., arrest, search and seizure) law enforcement decisions with more cross references to other sources and past precedents; and (2) a broader scope of coverage in terms of the types of cases that may be of interest to law enforcement in Washington (though public disclosure decisions are unlikely to be addressed in depth in the Legal Update). For these reasons, starting with the January 2015 Legal Update, Mr. Wasberg has been presenting a monthly case law update for published decisions from Washington's appellate courts, from the Ninth Circuit of the United States Court of Appeals, and from the United States Supreme Court.

The Legal Update does not speak for any person other than Mr. Wasberg, nor does it speak for any agency. Officers are urged to discuss issues with their agencies' legal advisors and their local prosecutors. The Legal Update is published as a research source only and does not purport to furnish legal advice. Mr. Wasberg's email address is jrwasberg@comcast.net. His cell phone number is (206) 434-0200. The initial monthly Legal Update was issued for January 2015. Mr. Wasberg will electronically provide back issues on request.

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

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

the Washington Courts' website). Washington Rules of Court (including rules for appellate courts, superior courts, and courts of limited jurisdiction) are accessible via links on the Courts' website or by going directly to [http://www.courts.wa.gov/court_rules].

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

Access to relatively current Washington state agency administrative rules (including DOL rules in Title 308 WAC, WSP equipment rules at Title 204 WAC, and State Toxicologist rules at WAC 448-15), as well as all RCW's, is at [http://www.leg.wa.gov/legislature]. Information about bills filed since 1991 in the Washington Legislature is at the same address. Click on "Washington State Legislature," "bill info," "house bill information/senate bill information," and use bill numbers to access information. Access to the "Washington State Register" for the most recent proposed WAC amendments is at this address too. In addition, a wide range of state government information can be accessed at [http://access.wa.gov]. For information about access to the Criminal Justice Training Commission's Law Enforcement Digest and for direct access to some articles on and compilations of law enforcement cases, go to [cjtc.wa.gov/resources/law-enforcement-digest].

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