LEGAL UPDATE FOR WASHINGTON LAW ENFORCEMENT

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

DECEMBER 2022

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NINTH CIRCUIT OF THE UNITED STATES COURT OF APPEALS

CIVIL RIGHTS ACTION SECTION 1983 CIVIL LIABILITY FOR LAW ENFORCEMENT: IN A 2-1 RULING, PANEL RULES THAT FACTUAL DISPUTES PRECLUDE GRANTING QUALIFIED IMMUNITY TO OFFICER IN DEADLY FORCE CASE WHERE THERE IS DISPUTE IN THE RECORD AS TO WHETHER – IN ADDITION TO SOME OTHER DISPUTED FACTS – THE SHOOTING OFFICER TOLD THE NOW-DECEASED TO "STOP" PUMMELING A STRADDLED FELLOW OFFICER, AND THE SUMMARY JUDGMENT RECORD ALSO WOULD ALLOW A JURY TO CONCLUDE THAT (1) THE SHOOTING OFFICER DID NOT WARN THAT DEADLY FORCE WAS ABOUT TO BE USED BY THE OFFICER, AND (2) TIME WOULD HAVE ALLOWED SUCH A WARNING BEFORE SHOOTING

In Smith v. Agdeppa and LAPD, ___ F.4th ___ , 2022 WL ___ (9th Cir., December 30, 2022), a three-judge Ninth Circuit panel votes 2-1 to affirm a the U.S. District Court order that denied summary judgment to the LAPD and its Officer Adgeppa on those government defendants' request for a grant of qualified immunity to the officer in a civil action brought under 42 U.S.C. § 1983. As is often the case in section 1983 use-of-force cases brought under the Fourth Amendment, the case is resolved against the officer seeking qualified immunity in a summary judgment motion because the court (in this case a 2-1 majority) concludes that there is conflicting evidence on key issues under the reasonableness balancing test set out by the U.S. Supreme Court in Graham v. Connor, 490 U.S. 386 (1989).

The lawsuit by Plaintiff (a successor in interest to the deceased Mr. Dorsey) alleges that LAPD Officer Adgeppa used unreasonable deadly force when he shot and killed Albert Dorsey during a failed arrest of the naked, large, erratically-acting Mr. Dorsey in the men's locker room of a private gym. In the District Court summary judgment pleadings and depositions and argument, Officer Agdeppa and LAPD maintained that he killed Dorsey because Dorsey, who was larger than the officers, was pummeling Officer Agdeppa's partner while straddling her while she was on the floor in a vulnerable position, and Officer Agdeppa feared Dorsey's next blow would kill her. Officer Agdeppa also claimed that he yelled "stop" before shooting, but no such warning could be heard on the officers' body-cam recordings (note that both of the officers' body-cams were knocked off of them early in the struggle, and only the audio recording element of the body-cams captured any of the key part of the events, and, again, the word "stop" was not on the audio recording).

MAJORITY OPINION

The Majority Opinion (covering about 20 pages) concludes that qualified immunity was properly denied for the following key reasons:

(1) The audio recording did not capture the officer telling Dorsey to "stop fighting" as the Officer Agdeppa contended in pleadings that he had done, and a jury could conclude that no such order or warning was given, and that there was time to give such an order or warning before shooting;

(2) The U.S. Supreme Court in Tennessee v. Garner, 471 U.S. 1 (1985) declared that under the Fourth Amendment, if practicable under the circumstances, a warning should be given that deadly force is going to be used – (A) there is no evidence in the summary judgment record, not even in Officer Agdeppa's pleadings and deposition, that the officer gave a warning that deadly force would be used if Dorsey did not stop fighting; and (B) there is evidence from which a jury could conclude that there was a reasonable amount of time and that it was not impracticable to give such a warning;

(3) Photographs of Officer Agdeppa's partner taken shortly after the event appeared to show no significant injury, thus providing a basis for a jury to reject Officer Agdeppa's claim of imminent danger of death for his partner; and

(4) The autopsy report and an account by one bystander witness contradicted Officer Agdeppa's report of where Officer Agdeppa was located when he did the shooting.

The Majority Opinion also notes that the Los Angeles Board of Police Commissioners' internal investigation of the shooting concluded that "there was no exigency that required the officers to stay physically engaged with [Dorsey]" and stated further as follows:

> Once the officers had initiated physical contact with [Dorsey], it was readily apparent that [Dorsey's] greater size and strength, in concert with his noncompliant behavior, would make it difficult, if not impossible, for the officers to accomplish their goal of handcuffing him. At that time during the incident, there was no exigency that required the officers to stay physically engaged with [Dorsey]. Nevertheless, the officers did not take the opportunity to disengage from their physical struggle and redeploy in order to allow for the assembly of sufficient resources. Rather, the officers stayed engaged as the situation continued to escalate, culminating in injurious assaults on both officers and the ultimate use of deadly force by Officer [Agdeppa].

LEGAL UPDATE EDITOR'S NOTE: The Majority Opinion does not explain how, under the case law relating to section 1983 deadly force lawsuits, the earlier decisions and activity of the officers would be relevant to the officers' subsequent application of deadly force. For a discussion of that issue and the conflicting case law on the issue, see generally, Professor Cynthia Lee, "Officer-Created Jeopardy Broadening the Time Frame for Assessing a Police Officer's Use of Deadly Force," 89 Geo. Wash. L. Rev. 1362 (2021). On January 3, 2023, the article could be accessed on the Internet at:
https://scholarship.law.gwu.edu/faculty_publications/1529/

DISSENTING OPINION

A Ninth Circuit staff summary (which is not part of the Dissenting Opinion) provides the following brief synopsis of the Dissent (covering about 24 pages):

> Dissenting, Judge Bress stated that the two police officers in this case found themselves in a violent confrontation with a large, combative suspect, who ignored their repeated orders to stop resisting and failed to respond to numerous taser deployments. After the suspect's assault on the officers intensified and he wrested one of the officers' tasers into his own hands, one officer shot the suspect to end the aggression. The split-second decision officers made here presented a classic case for qualified immunity. The majority's decision otherwise was contrary to law and requires officers to hesitate in situations in which decisive action, even if leading to the regrettable loss of human life, can be necessary to protect their own.

The Dissent strenuously objects to much of the Majority Opinion's statements about what the summary judgment record reflects and about Fourth Amendment case law on use of deadly force. The Dissent includes a lengthy discussion disagreeing with key parts of the Majority Opinion's discussion of the deadly force warning requirement of Tennessee v. Garner.

Result: Affirmance of denial of qualified immunity by U.S. District Court (Central District of California) to LAPD officer Agdeppa.

CIVIL RIGHTS ACTION SECTION 1983 CIVIL LIABILITY FOR GOVERNMENT INVESTIGATIVE AGENCIES: "PRIVATE SEARCH EXCEPTION" OF THE FOURTH AMENDMENT IS APPLIED IN A CASE WHERE DISGRUNTLED EMPLOYEES OF AN ELECTRICAL CONTRACTOR ACTED ON THEIR OWN TO PROVIDE A GOVERNMENT

ENFORCEMENT AGENCY WITH CELL SITE LOCATION INFORMATION REGARDING THE LOCATION OF THE EMPLOYER'S VEHICLES; "THIRD PARTY SEARCH EXCEPTION" OF THE FOURTH AMENDMENT IS DECLARED INAPPLICABLE ON THE FACTS OF THIS CASE

In Kleiser and Mr. Electric of Clark County v. Department of Labor & Industries, ___ F.4th ___ , 2022 WL ___ (9th Cir., December 9, 2022), a three-judge Ninth Circuit panel rules in favor of the Washington State Department of Labor & Industries (DLI) in a section 1983 Civil Rights Act lawsuit on the issue of whether DLI violated the Fourth Amendment. Although DLI is not a criminal justice agency, and although the ruling addresses the scope only of the Fourth Amendment (and does not address the sometimes-more-restrictive rules for law enforcement imposed through Washington appellate court decisions applying article I section 7 of the Washington State constitution), the ruling is applicable and useful for all law enforcement agencies in Washington.

"Mr. Electric of Clark County" (hereafter generally referred to as "the employer") is an electrical contracting business. Some disgruntled employees of the employer were upset that the employer was not properly supervising journeymen electricians. The disgruntled employees went to DLI with cell site location information (CSLI) that the employees had obtained to prove their allegations against the employer. DLI used that information to write citations and levy civil penalties against the employer.

The employer filed a section 1983 Civil Rights Act lawsuit against DLI in federal district court. The employer contended that DLI had violated the Fourth Amendment by using CSLI that had not been obtained with a search warrant but instead had been collected and handed over to DLI by the disgruntled employees. The federal district court ruled against Mr. Electric's Fourth Amendment theory, concluding that the Fourth Amendment "private search" doctrine justified DLI in using evidence that had been obtained by the disgruntled employees without involvement of DLI in the seeking or obtaining of the evidence.

The employer contended in its lawsuit and on appeal to the Ninth Circuit that Carpenter v. United States, 138 S. Ct. 2206 (2018), and Wilson v. United States, 13 F.4th 961 (9th Cir. 2021) foreclosed the Department's use of plaintiffs' cell site location information because, when read together, the cases extinguished the applicability of the "private search doctrine" under the Fourth Amendment whenever cell site location information is involved.

The three-judge panel in the Mr. Electric of Clark County case issues a very brief and summary Opinion. That Opinion notes that, although Carpenter held that the "third-party search exception" does not apply as an exception to the Fourth Amendment's warrant requirement when the government seeks cell site location information, the Carpenter decision did not address and thus did not impact the "private search exception," which is an altogether separate Fourth Amendment exception, and which controls the ruling in favor of DLI in the Mr. Electric of Clark County case.

Also, as to the employer's citation to the Ninth Circuit's decision in Wilson v. United Sates, the three-judge panel in the Mr. Electric of Clark County case indicates that, to the extent that some language in the Ninth Circuit's Wilson decision suggests that the U.S. Supreme Court decision in Carpenter undercuts the U.S. Supreme Court "third party search exception" case law, that language of a lower court (the Ninth Circuit) cannot override the U.S. Supreme Court's precedents. And, because the U.S. Supreme Court did not hold in the Carpenter decision or

any other decision that the "third party search exception" has been changed, the Ninth Circuit panel rules that the employer's argument fails in the Mr. Electric of Clark County case.

Result: Affirmance of summary judgment order of U.S. District Court (Western District of Washington) in favor of DLI.

LEGAL UPDATE EDITOR'S NOTE: *Background information about the "private search exception" or "private search doctrine"*

In Burdeau v. McDowell, 256 U.S. 465 (1921), the U.S. Supreme Court held that the Fourth Amendment of the United States Constitution is a limit on governmental action and not a limit on purely private action. See also United States v. Jacobson, 466 U.S. 109 (1984). Consequently, the U.S. Supreme Court ruled in Burdeau and Jacobson that evidence seized by a private individual's personal search that does not involve government actors in certain ways should not be suppressed in a subsequent criminal action.

This element of the "private search" rule is equally applicable under article I, section 7 of the Washington constitution. Thus, under the Washington constitution, the exclusionary rule is inapplicable to searches by private persons unless it is shown that a Washington state or local law enforcement officer in some way "instigated, encouraged, counseled, directed, or controlled" the conduct of the private person. State v. Wolken, 103 Wn.2d 823, 830 (1985). As to this governmental-involvement exception to the "private search exception," the mere purpose of private individuals to aid the government is insufficient to transform an otherwise private search into a government search. State v. Sweet, 23 Wn. App. 97, 100 (1979). The critical factors for determining whether a private party is acting as a government instrument or agent are: (1) whether the government knew of and acquiesced in the intrusive conduct; and (2) whether the party performing the search intended to assist law enforcement efforts or further his own ends. In the Mr. Electric of Clark County case, there was no issue of DLI involvement in the private search.

Under the Fourth Amendment, the U.S. Supreme Court has extended the "private search" rule to allow government agents to go back and search in areas that the private person had searched, so long as the government agents do not go beyond the scope of that private search. The Washington Supreme Court has ruled, however, that under article I, section 7 of the Washington constitution, state constitutional privacy interests survive the exposure that occurs when it is intruded upon by a private actor. Thus, while the intrusion by the private person is not subject to the Washington Exclusionary Rule, an individual's privacy interest is not extinguished simply because a private actor has intruded upon the interest. See State v. Eisfeldt, 163 Wn.2d 628 (2008). Under the Washington constitution, unlike under the Fourth Amendment, government agents may not lawfully to go back and search in areas that the private person had searched.

Under the Washington constitution, however, the Eisfeldt holding does not bar a government agent from relying on the private person's observations to pursue prosecution or to establish probable cause of the issuance of a search warrant. See State v. Krajeski, 104 Wn. App. 377, 383 (2001), where entry into an apartment by the defendant's mother and landlord were private searches as they were for the purposes of securing the defendant's dog and to collect the defendant's belongings while he was in jail.

In the Mr. Electric of Clark County case, there was no issue of DLI doing any of its own searching for cell site location information. Thus, under the simple facts of the case, where disgruntled employees gathered CSLI on their own and provided it to DLI, and DLI did not do a follow-up search, the "private search exception" applied in the federal case, and the doctrine would also have applied in a case in the Washington state courts.

LEGAL UPDATE EDITOR'S NOTE: *Background information about the Fourth Amendment "third party search exception" or "third party search doctrine"*

In United States v. Miller, 425 U.S. 435 (1976) (bank records) and Smith v. Maryland, 442 U.S. 735 (1979) (pen register and telephone company records) the United States Supreme Court held that a person has no legitimate Fourth Amendment expectation of privacy in information that the person has voluntarily turned over to a third part, such as a bank or phone company. The Miller and Smith decisions are the leading cases for what is known as the "third party search exception" or "third party search doctrine."

In Carpenter v. United States (2018), the Supreme Court created a limited exception to the third-party [search] doctrine when the Court ruled that search warrants (or a recognized exception to the warrant requirement) are needed for gathering cell site location and tracking information from third party service providers that are in possession of such CSLI. Supreme Court remarks in Carpenter as rationales for not applying the third party doctrine in that case included comments (1) that cell phones are almost a "feature of human anatomy;" (2) that "when the Government tracks the location of a cell phone, it achieves near perfect surveillance, as if it had attached an ankle monitor to the phone's user;" (3) that cell-site location information provides officers with "an all-encompassing record of the holder's whereabouts;" and (4) that the information "provides an intimate window into a person's life, revealing not only [an individual's] particular movements, but through them [their] familial, political, professional, religious, and sexual associations."

In State v. Gunwall, 106 Wn.2d 54 (1986), the Washington Supreme Court declared in an independent grounds ruling that the third-party doctrine is not part of article I, section 7 of the Washington constitution. Thus, the Washington Supreme Court held in Gunwall that telephone toll records (long distance records) can be obtained from phone companies by law enforcement only by search warrant or under one of the recognized exceptions to the warrant requirement. The following year, Division One of the Washington Court of Appeals applied Gunwall in State v. Butterworth, 48 Wn. App. 152 (Div. I, 1987) Aug. '87 LED:19. The Butterworth Court held that unlisted phone subscriber information is similarly protected by article I, section 7. The State Supreme Court ruled similarly as to bank records in State v. Miles, 160 Wn.2d 236 (2007) Nov. '07 LED:07

Also, in State v. Jorden, 160 Wn.2d 121 (2007), the Washington Supreme Court that a law enforcement random warrantless check of a hotel registry is not constitutional under article I, section 7 even if proprietor consents (though the Supreme Court did rule four years later that check based on objective individualized suspicion of criminal activity in motel room is permitted; see In re Personal Restraint of Nichols, 171 Wn.2d 370 (2011) June 11 LED:21).

As noted above in this Legal Update entry, the facts in the case of Mr. Electric of Clark County did not implicate the "third party doctrine." This was not the circumstance of a company with control of records of customers turning evidence over to a government enforcement agency. Instead, the Mr. Electric case involved a gathering of CSLI by

private persons with no connection to the commercial relationship of cell customers to their proprietors. Thus, the "third party search exception" was not relevant in the Mr. Electric case.

IN CRIMINAL PROSECUTION, DEFENDANT LOSES ON HIS THEORY UNDER GARRITY V. NEW JERSEY THAT HIS STATEMENTS TO GOVERNMENT INVESTIGATORS WERE COERCED AND THEREFORE SHOULD BE SUPPRESSED; HE CANNOT MEET THE DUAL REQUIREMENTS FOR SUBJECTIVE BELIEF AND OBJECTIVE REASONABLENESS NECESSARY TO SUPPORT A GARRITY-BASED SUPPRESSION CLAIM OF COERCION

In United States v. Wells, ___ F.4th ___ , 2022 WL ___ (9th Cir., December 14, 2022), a three-judge Ninth Circuit panel affirms the convictions of James Wells in a case in which Wells, while a Coast Guard employee, shot and killed two co-workers at a Coast Guard station.

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

> Wells contended that under the Fifth Amendment and Garrity v. New Jersey, 385 U.S. 493 (1967), statements he made to government investigators should have been suppressed because they were made under threat of loss of employment.
>
> The [three-judge Ninth Circuit] panel's independent review of the record confirmed that the investigators did not explicitly threaten Wells's job security if he refused to incriminate himself, and Wells did not argue otherwise. Instead, Wells advanced a theory of implicit coercion by virtue of an employment manual, and a letter of caution he received after allegedly using a fuel card for his personal vehicle. [Wells argued that the employment manual and the letter of caution] operated in the background of his interviews to create "an impermissible penalty situation."
>
> The panel [in Wells] held that in the absence of a direct threat of loss of employment, the appropriate framework for the court is to consider both the public employee's subjective belief and the objective reasonableness of that belief to determine whether the employee's statements were improperly coerced. [The Wells panel asserted that] it is only when both elements are satisfied that the employee is, under Garrity, entitled to suppression of his statements absent a grant of immunity.
>
> The panel rejected Wells's argument that United States v. Saechao, 418 F.3d 1073 (2005), controls and sets forth a purely objective test. Turning to Wells's Garrity claim within the proper framework, the panel wrote that the evidence in the record does not suggest that Wells subjectively believed that either the employment manual or the letter of caution required him to answer the investigator's questions or to waive his immunity from self-incrimination. [T]o the contrary, the interview transcripts reveal Wells's affirmative intent to cooperate with the investigation in an apparent effort to make it seem that he had nothing to hide.
>
> Having concluded that Wells did not establish a subjective belief that he was required to answer the investigators' questions or suffer an employment consequence, the [Wells] panel did not need to consider whether, if Wells had held such a belief, it would have been objectively reasonable.

Thus, Wells was not implicitly coerced to provide his interview statements, and the Fifth Amendment did not prevent the introduction of his statements at trial.

Result: Affirmance of U.S. District Court (Alaska) conviction of James Michael Wells for the federal crimes of first-degree murder and two counts of using a firearm in relation to a crime of violence.

IN APPEALS FROM CONVICTIONS FOR SEXUAL CRIMES AGAINST CHILDREN, A NINTH CIRCUIT PANEL REJECTS DEFENDANTS' CHALLENGES TO GOVERNMENT SEARCHES -- INCLUDING A RULING THAT VIDEOS THAT DEFENDANTS HAD HIDDEN IN AN ATTIC CRAWLSPACE OF A HOME THAT THEY SUBSEQUENTLY SOLD WERE "ABANDONED" UNDER THE FOURTH AMENDMENT, EVEN THOUGH THE REASON THAT THE DEFENDANTS GAVE UP ON TRYING TO RECOVER THE VIDEOS FROM THE SOLD HOME WAS THAT THEY FEARED DETECTION BY LAWS ENFORCEMENT IF THEY TRIED FOR SUCH RETRIEVAL

In United States v. Fisher, ___ F.4th ___ , 2022 WL ___ (9th Cir., December 21, 2022), a three-judge Ninth Circuit panel affirms the U.S. District Court's orders denying defendants Justin and Joshua Fisher's joint motions to suppress evidence from two searches, in a case in which the defendants entered conditional guilty pleas to various sexual offenses against children.

A Ninth Circuit staff summary (which is not part of the Majority Opinion and Concurring Opinion provides the following synopsis of the panel Opinions:

> The defendants first argued that the District Court erred in denying their first motion to suppress because a detective's affidavit supporting a 2016 warrant to search Justin's residence contained material, intentionally false and/or reckless statements and omissions that misled the issuing judge; specifically, that the affidavit misstated the contents of a CyberTipline Report, drew conclusions unsupported by the Report, and ignored exculpatory factors.
>
> The [three-judge Ninth Circuit] panel held that the defendants failed to show that the affidavit contained any materially false statements or omissions (much less any such statements knowingly or recklessly made). The panel wrote that the defendants misstated the factual record by insisting that only one IP address was relevant, and that the defendants do not substantively address the results from a Tumblr search warrant referenced in the affidavit, which further supports the probable cause determination. The panel concluded that there is no basis on which to find that the district court erred in its factfinding, or that the issuing judge was materially misled when reaching a probable cause determination.
>
> The defendants further argued that the district court erred in denying their second motion to suppress evidence derived from a 2018 search. The district court did not reach the merits because it determined that the defendants lacked standing to challenge the search of certain devices recovered from the attic crawlspace of the residence after it was sold to new owners.
>
> The panel held that the district court did not clearly err by finding that the defendants abandoned the devices. The panel wrote that the defendants' failure to ensure that their brother recovered the devices before the home was sold, and their subsequent failure to

take any additional action, is sufficient to support a finding of abandonment, even if the defendants ceased their efforts only because they feared detection by law enforcement. The panel concluded that the defendants therefore lost any reasonable expectation of privacy in the devices, and lacked standing to seek suppression of their contents.

Judge Graber concurred in the judgment only. Regarding the 2016 search warrant, she wrote that probable cause existed, even assuming the panel agreed with the defendants' arguments concerning IP addresses. She therefore would not reach the merits of the dispute about the IP addresses. Regarding the 2018 search, she wrote that the defendants lacked any reasonable expectation of privacy in items that they had left in the house.

[Some paragraphing revised for readability]

In key part, the Majority Opinion's analysis of the abandonment issue is as follows:

"[P]ersons who voluntarily abandon property lack standing to complain of its search or seizure." United States v. Nordling, 804 F.2d 1466, 1469 (9th Cir. 1986) (citation omitted). Abandonment is a factual determination that "is a question of intent." Nordling. That is, the factfinder's "inquiry should focus on whether, through words, acts or other objective indications, a person has relinquished a reasonable expectation of privacy in the property at the time of the search or seizure."

We find that the district court did not clearly err by finding abandonment here, and accordingly, we conclude that Defendants lacked standing to challenge the 2018 search of the devices recovered from the Burkehaven Avenue Residence.

The district court found that one or both of the Defendants had, at some point prior to detention, concealed the recovered devices in the walls of the Burkehaven Avenue Residence attic. Thereafter, the district court determined that Defendants' intentions with respect to those devices changed,18 because "no efforts were made to retrieve the items after the house was sold in September 2017 until the items were seized by the Government in July 2018."

> [Court's footnote 18: As Magistrate Judge Foley detailed in his Findings and Recommendation, Defendants initially took steps to retrieve the concealed devices by enlisting the help of their out-of-custody brother, E, "to remove something secret from the Burkehaven residence' when no one else was around" and before the home was sold. E was unable to discover the concealed items.]

Defendants argue on appeal that they did not intend to abandon the items because they

> manifested a desire and concern to safeguard the items and keep them secure from accidental exposure or even an intentional search. . . . The effort to secret the items from prying and even searching eyes indicates their value to the owner.

Defendants further contend that they "had an ongoing interest in the devices even though they had no physical control over the devices. They were only not in physical possession of the devices (and their home) because of their arrest and subsequent incarceration."

This argument is unpersuasive. It is well-established in this Circuit's caselaw that property may be abandoned even when the defendant only abandons the property in response to, or in anticipation of, law enforcement action. See, e.g., United States v. McLaughlin, 525 F.2d 517, 519–20 (9th Cir. 1975) (finding that contraband was abandoned property when it was thrown from a truck during law enforcement pursuit); Nordling, 804 F.2d at 1470 ("Nordling physically relinquished control of the tote bag when he left it on the airplane where anyone, including the PSA employee who found it in Seattle, could have access to it. That act of relinquishment, under the circumstances in which Nordling found himself, also supports an inference that he intended to abandon the bag. . . . While everyone who leaves luggage on an airplane cannot be said to have abandoned it, Nordling deliberately chose to leave the bag behind when requested by officers to leave the plane.").

The district court's finding here was premised on Defendants' "acts [and] other objective indications" that they had decided to abandon the devices in the attic, thus relinquishing any reasonable expectation of privacy in them. Specifically, the district court— and Magistrate Judge Foley—pointed to the lapse of more than nine months between the sale of the residence and the eventual search, during which the devices were recovered at the consent of the new homeowner, T.

That Defendants concealed the devices, and initially attempted to recover them by enlisting their brother E's help, does not compel us to reach a different conclusion than the district court on either the facts or the law. "If one who has abandoned property from all outward appearances in fact has retained a subjective expectation of privacy, then a search of the property is nevertheless valid if that expectation is intrinsically unreasonable or not otherwise entitled to protection." United States v. Sledge, 650 F.2d 1075, 1080 (9th Cir. 1981).

As shown by the record, Defendants' failure to ensure that [their brother, E] recovered the devices before the home was sold, and their subsequent failure to take any additional action, is sufficient to support a finding of abandonment, even if Defendants ceased their efforts only because they feared detection by law enforcement. See United States v. Cella, 568 F.2d 1266, 1284 (9th Cir. 1977) ("[B]y telling [a third party] to destroy the [documents later seized], and failing to ensure that he did so, the defendants abandoned the materials and lost any reasonable expectation of privacy in them."); see also Nordling, 804 F.2d at 1470 ("Nordling disclaimed ownership and left the bag on the airplane in circumstances in which it was virtually certain that the bag would be opened, inspected and turned over to law enforcement authorities before he could possibly attempt to re-exert physical control.").

Accordingly, we hold that the district court did not clearly err by finding that Defendants abandoned the devices seized in the 2018 search of the Burkehaven Avenue Residence. Because Defendants abandoned the devices, they lost any reasonable expectation of privacy in them, and lacked standing to seek suppression of the devices' contents. We therefore affirm the district court's denial of Defendants' second Motion to Suppress.

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

Result: Affirmance of convictions of the two defendants (brothers Justin and Joshua Fisher) by the Federal District Court of Nevada for various sex sexual crimes against children.

LEGAL UPDATE EDITOR'S NOTE: The Washington Supreme Court applied the abandonment doctrine in holding that a vehicle thief lost his privacy right in his cell phone that he left behind in a stolen vehicle when he ran from the police after the police attempted a vehicle stop. See State v. Samalia, 186 Wn.2d 262 (July 28, 2016)

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WASHINGTON STATE COURT OF APPEALS

DUI DEFENDANT IS UNSUCCESSFUL IN HIS CLAIM TO THE ARRESTING OFFICER, TO THE TRIAL COURT, AND TO THE COURT OF APPEALS THAT HE BECAME INTOXICATED BY DRINKING AFTER DRIVING INTO A RIVER BECAUSE DRIVING INTO THE RIVER MADE HIM UPSET

In State .v Gregory, ___ Wn. App. 2d ___ , 2022 WL ___ (Div. III, December 22, 2022), a defendant appealed his DUI conviction and argued that there was insufficient evidence to conviction him in light of the fact that he told an arresting officer, and later testified, that, while he had consumed a little alcohol before driving his vehicle into a river, he became intoxicated only after consuming a large volume of alcohol after the accident. There is no evidence in the case that he drove after driving into the river.

The Court of Appeals describes the facts and some key elements of the trial court proceedings as follows:

> After reviewing the scene of the accident [that had occurred earlier that evening, a deputy went to the place where the deputy had been told that Mr. Gregory was located]. Mr. Gregory was breathing but unresponsive in the back of [a pickup truck], and Deputy Conley had to rouse him with a sternum rub.
>
> Mr. Gregory's eyes were bloodshot, and his eyelids were heavy, and, despite the darkness, his pupils were tightly constricted. Mr. Gregory told [the deputy that] he had become intoxicated after driving into the river. He admitted drinking before the crash but believed he was fine to drive. [There is no evidence in the case that he drove after the crash.]
>
> When [the deputy] attempted to pinpoint when Mr. Gregory became intoxicated, Mr. Gregory denied drinking in or at the vehicle after crashing into the river, before the farm truck picked him up [following the accident], or after the farm truck dropped him off [at the property of a Mr. Cramer, who, with friends, provided clothes, blankets, water, and food, and provided a place for Mr. Gregory to lie down].
>
> . . . .
>
> Mr. Gregory testified in his own defense. He admitted to smoking marijuana in the morning at the hatchery. He described drinking three or four beers over the course of the afternoon. He testified that he was not under the influence of alcohol when he left the [parking lot of the] hatchery. He agreed that he drove into the river within "two minutes tops" of leaving the hatchery [parking lot].

> Mr. Gregory testified he began drinking in the truck after the crash. He could not explain why he did this instead of going to look for help, except he was very upset about wrecking the truck. He just thought drinking seemed like "the thing to do at the time." He testified he was in the river for 20 to 30 minutes, had a half-gallon bottle of gin in the truck, and he drank quite a bit of it.
>
> . . . .
>
> The [trial judge] told Mr. Gregory, it "wasn't really believable that you'd want to sit out in the cold in the water, wet, in your vehicle for about 30 minutes in March, after dark." In its written findings, the [trial judge] found that Mr. Gregory drove the truck into the river at 8:00 p.m. or shortly before. It found his testimony that he sat in the truck after crashing not credible. Instead, it found he drank a large amount of alcohol and became impaired before leaving the parking lot.

[Some paragraphing revised for readability]

In key part, the analysis by the Court of Appeals regarding Mr. Gregory's sufficiency-of-the-evidence issue is as follows:

> Mr. Gregory's sufficiency argument relies on his own testimony that he became intoxicated after crashing into the river. He ignores that [when a convicted defendant appeals regarding the sufficiency of the evidence] we view the evidence and inferences in the light most favorable to the State . . . He also ignores the trial court's finding that his testimony on that point was not credible. Any assessment of the sufficiency of the evidence must be premised on the unchallenged finding that Mr. Gregory drank before he drove the truck into the river.
> . . . .
>
> The trial court found that Mr. Gregory drank heavily before he began driving, and he drove the truck into the river at 8:00 p.m., or shortly before. At 11:00 p.m., about three hours after driving, Mr. Gregory's BAC was 0.29 – well above the legal limit of 0.08. [The deputy] testified, without objection, that once a person drinks alcohol, their body begins metabolizing it, and the alcohol concentration eventually decreases. Based on this evidence, the trial court could find beyond a reasonable doubt that Mr. Gregory's BAC was 0.08 or higher shortly before 10:00 p.m., within two hours of driving.

Result: Affirmance of Asotin County Superior Court conviction of Laron R. Gregory for felony driving while under the influence.

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

The two entries below address the December 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. John Francis Jude Suppah: On December 6, 2022, Division Two of the COA rejects the defendant's challenges to his Pierce County Superior Court convictions for: (A) *one count of second degree felony murder*, (B) *one count of drive-by shooting*, (C) *one count of second degree unlawful possession of a firearm*, (D) *one count of unlawful possession of a stolen vehicle*, and (E) *two counts of witness tampering*. **One of the issues in the case was whether a "trap and trace" court order for a particular phone number was invalid because the order did not specify any geographical limits for the trap and trace activity. The Court of Appeals rules that the order was invalid because it did not specify any geographical limits, but that the evidence that the defendant seeks to suppress is admissible because the "Independent Source" constitutional exception to the exclusion of evidence applies in this case because the evidence that defendant sought to suppress (1) was seized incident to the defendant's arrest on an arrest warrant (or was developed from the evidence) and (2) was not the fruit of the invalid trap and trace order.**

In key part, the explanation of the Court of Appeals in Suppah as to the invalidity of the trap and trace order (based on lack of geographical limits) is as follows:

> RCW 9.73.260(4)(c)(i) states, "The order shall specify . . . the geographic limits of the trap and trace order." The plain language of the statute states that the order "shall specify," which makes clear that the order must include the geographic limits. The plain language of the statute is clear and no further inquiry is required. . . .
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> The trial court here found that "[n]one of the trap and trace orders obtained by the police in this case have any geographic boundaries within the orders." Despite that finding, the trial court concluded
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> > as a matter of law that the absence of geographic boundaries in the trap and trace orders are not fatal to the validity of the orders, for several reasons, including the fact that this case involves a homicide, which likely means a court would issue those orders with nationwide boundaries, and also the fact that in this particular case, the information provided by Sprint led to a location that was within a short distance from the city of Tacoma and Pierce County.
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> This was error.

> There is no exception laid out in the statute for an exception if a case involves a homicide. In fact, there is no language in the statute outlining any exceptions for types of cases. Also, the trial court engaged in pure speculation by saying that because this case involved a homicide, it is likely a court would issue a nationwide boundary. Finally, the trial court's rationalization that because the trap and trace order led to information about a location within a short distance from Tacoma and Pierce County is untenable. The trial court's reasoning would require a hindsight analysis to determine with no clear guidance whether the order without the statutorily required geographic limits yielded information that was a "short distance" from the crime scene and then determine whether that distance was "short" enough to justify finding a court order that fails to include the required geographic limits "valid."
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> The State argues that the geographic limits of the trap and trace order "can be readily inferred by this Court (as a matter of law) as anywhere on Earth." This argument lacks any merit because the statute would not have included a geographic limit requirement if the limit was anywhere on Earth. Also, the State's argument would render the statutory requirement that the trap and trace order include geographic limits superfluous. . . .
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> The State also argues substantial performance. [As to that argument, the Court of Appeals indicates that there is no legal authority to support a substantial performance argument under the statute.]
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> Because the geographic limits requirement is mandated by statute and the trap and trace order failed to include any geographic limit, the order was invalid. . . . .

[Case citations omitted]

LEGAL UPDATE EDITOR'S NOTE REGARDING THE ELECTRONIC SURVEILLANCE AND DIGITAL EVIDENCE MANUAL FROM THE KING COUNTY PROSECUTOR'S OFFICE

One of the research sources on the publications page of the website of the Washington Association of Prosecuting Attorneys (WAPA) is a comprehensive and well-indexed compilation, Electronic Surveillance and Digital Evidence in Washington State, 2017, from the King County Prosecuting Attorney's Office. The court order requirement under RCW 9.73.260 that is discussed in the Suppah Opinion is discussed in the Electronic Surveillance and Digital Evidence Manual at pages 121-122 of the Manual. Contact information for the King County Prosecuting Attorney's Office is provided just prior to page 1 of the Manual.

The Opinion in State v. John Francis Jude Suppah can be accessed on the Internet at:
https://www.courts.wa.gov/opinions/pdf/D2%2051068-5-II%20Unpublished%20Opinion.pdf

2. State v. David M. Campbell: On December 8, 2022, Division Three of the COA rejects the defendant's challenge to his Spokane County Superior Court conviction *for second degree murder* and reverses his conviction for *possession of methamphetamine*. **The Court of Appeals agrees with defendant's argument that the trial court committed evidentiary error by admitting as a recorded recollection under Evidence Rule 803(a)(5), statements that a testifying detective attributed to a witness. Allowing the testimony was error because (1) the witness had not adopted the detective's record of her statements, and (2) there was insufficient evidence that the detective's report accurately reflected her**

knowledge. However, in light of the other evidence of the defendant's guilt, the trial court error is ruled to be harmless.

In key part, the analysis by the Court of Appeals under ER 803(a)(5) is as follows:

> ER 803(a)(5) provides an exception to the hearsay rule for recorded recollection, whether or not the declarant is available. It states:
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> > A memorandum or record concerning a matter about which a witness once had knowledge but now has insufficient recollection to enable the witness to testify fully and accurately, shown to have been made or adopted by the witness when the matter was fresh in the witness' memory and to reflect that knowledge correctly. If admitted, the memorandum or record may be read into evidence but may not itself be received as an exhibit unless offered by an adverse party.
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> Courts evaluating a record for admission under ER 803(a)(5) have gleaned four elements of a foundation from the rule. "Admission is proper when the proponent of the evidence demonstrates that (1) the record pertains to a matter about which the witness once had knowledge, (2) the witness has an insufficient recollection of the matter to provide truthful and accurate trial testimony, (3) the record was made or adopted by the witness when the matter was fresh in the witness's memory, and (4) the record reflects the witness's prior knowledge accurately." . . .
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> Mr. Campbell contends that neither the third nor fourth elements were demonstrated here. . . .
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> *Element 4: whether the record reflects the witness's prior knowledge accurately*
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> As was observed in State v. Alvarado, 89 Wn. App. 543, 550-51 (1998), the "normal," "ideal," means of demonstrating the fourth element required for a recorded recollection is to have the witness who made the statement testify that despite a present lack of memory, [the witness] recalls making the statement, and it was accurate when made. The State understandably did not elicit such testimony from Ms. Raddas [the witness in this case], since she did not make the record being offered.
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> [In the next several paragraphs, the Court of Appeals discusses some past appellate decisions interpreting ER 803(a)(5). That discussion is omitted from this Legal Update entry.]
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> As Mr. Campbell [the defendant] argues, the gap in the State's demonstration in this case is that the State was not offering the audio recording of Ms. Raddas's interview, but, instead, [the detective's] testimony about his narrative report. As argued by Mr. Campbell at trial, the detective's report did not even place Ms. Raddas's alleged statements in quotation marks. There is no indication that Ms. Raddas was asked to affirm to the detective at the time of the interview that everything she had told him was accurate.
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> We hold that the State's demonstration of the fourth element of the foundation was insufficient, but we need not find error on that basis alone because the third required element was also not demonstrated.

Element 3: whether the record was made or adopted by the witness when the matter was fresh in the witness's memory

Mr. Campbell also argues that the record being offered was not made or adopted by Ms. Raddas when fresh in her memory.

Lacking any other Washington authority on point, Mr. Campbell points to Derouin's citation to some dictum in a Vermont decision, State v. Marcy, 165 Vt. 89, 680 A.2d 76 (1996). We agree that the dictum in Marcy is instructive. The Vermont court pointed out that some cases have mischaracterized a third element "failure to adopt" problem as a fourth element "failure to affirm accuracy" problem. . . . As the Vermont court explains, such cases arise when the recorded recollection being offered was not made by the prescient witness, but by someone else, usually a law enforcement agent. As explained in Marcy, these cases present a problem with the third element, because if the recorded recollection was not "made" by the prescient witness, it must at least be "adopted" by her or him. As pointed out by the Vermont decision, "Understandably, where a prior statement was prepared by a person other than the witness, courts have relied on or even required evidence that the witness had sworn or otherwise affirmed the accuracy of the prepared statement, to satisfy the requirement that the witness adopted the statement." And, of course, the third element requires that the adoption occur "when the matter was fresh in the witness's memory." The State presented no evidence that Ms. Raddas adopted [the detective's] report at a time when the matter was fresh in her memory.

The State never responds to this point. Because the State never demonstrated Ms. Raddas's timely adoption of the recorded recollection it sought to offer and the totality of the circumstances do not demonstrate that the detective's report accurately reflects Ms. Raddas's knowledge, the trial court abused its discretion in admitting the testimony.

[Footnote and some case citations omitted, some citation revised for style]

However, as is noted above in this Legal Update entry, the Court of Appeals rules that the error by the trial court in admitting the detective's testimony was harmless because of the strength of other evidence of defendant's guilt of second degree murder.

In another ruling in the case, the Court of Appeals agrees with the State's concession that defendant's conviction for simple possession of methamphetamine must be reversed based on the Washington Supreme Court's decision in State v. Blake, 197 Wn.2d 170 (2021).

The Opinion in State v. David M. Campbell can be accessed on the Internet at:
https://www.courts.wa.gov/opinions/pdf/379230_unp.pdf

3. State v. Clara Marjorie Rood: On December 13, 2022, Division Two of the COA rejects the defendant's challenge to her Skamania County Superior Court convictions for (A) *attempted first degree murder*, (B) *first degree assault*, (C) *first degree robbery*, (D) *first degree kidnapping*, (E) *first degree burglary*, (F) *second degree identity theft*, and (G) *two counts of theft of a motor vehicle*. One of the defendant's arguments was that the trial court abused its discretion in denying Rood's motion to suppress her statements confessing to the crimes.

The suppression issue was whether a detective violated the Miranda-based rule that requires that, after a suspect invokes the right to an attorney during a custodial

interrogation, an officer is not permitted to try to talk the suspect out of that invocation or to continue questioning or to resume questioning. The bar continues while the suspect remains in custody, and the bar is lifted only if the suspect freely initiates contact with the officer and waives Miranda rights.

In the Rood case, a detective properly stopped a Mirandized custodial interrogation after the suspect invoked her right to an attorney. But the defendant alleges that, a short while later, after the detective walked her back to her jail cell, the detective told her (apparently falsely) that her accomplice was trying to "pin everything" on her. The detective later testified that he does not remember whether or not he made such a statement. The defendant contacted jail staff about 80 minutes later and said that she wanted to talk to the detective. The detective then carefully re-Mirandized the defendant, and she then confessed.

The trial court and the Court of Appeals ultimately concluded that it does not matter under the Miranda-based initiation-of-contact case law whether the detective said that the accomplice was trying to throw the defendant under the bus. The Court of Appeals concludes that the evidence is clear that the defendant voluntarily decided that she wanted to confess.

In key part, the fact-based analysis by the Rood Court regarding the Miranda-based initiation-of-contact issue is as follows:

> To determine whether any statement [the detective] may have made that Phillips blamed Rood for everything overcame Rood's ability to make a rational decision about her right to remain silent, we look to the totality of the circumstances. . . . Here, the totality of the circumstances show that even if [the detective] told Rood that Phillips was "pinning the whole thing" on her, that statement did not overcome Rood's ability to make a rational decision.
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> The parties do not dispute that Rood invoked her right to counsel and, therefore, all interrogation should have ceased. The parties also do not dispute that [the detective's] alleged statement did not result in an immediate response by Rood. Instead, even if [the detective] told Rood that Phillips had blamed everything on her, he then left Rood alone in her cell and returned to his office. And it was Rood who reinitiated contact with [the detective] an hour and twenty minutes after [the detective] allegedly made the statement, had taken her back to her holding cell, went back to his own office, and had no further contact with her.
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> After Rood reinitiated contact, [the detective] read to Rood her Miranda rights for a second time. [The detective] then went over the Miranda waiver form with Rood, who signed the form waiving her Miranda rights. Rood stated that she understood her rights and wished to waive them. Rood testified that she knew she could stop the second interview at any time by saying she wanted a lawyer. Further, Rood knew that she did not have to speak with [the detective]. Rood gave appropriate responses and was not confused during the second interview. The totality of the circumstances does not support Rood's argument that her confession resulted from coercion. Instead, the record shows that Rood was left alone in her cell, and [the detective] returned to his office. It was Rood who reinitiated contact and asked for a cup of coffee. [The detective] again left Rood alone. Only after he secured the cup of coffee did he engage with Rood. Given the sequence of events, Rood had time to make a rational decision to

> reinitiate contact with [the detective] after balancing the competing considerations of remaining silent or telling her side of the story. Thus, based on the specific facts of this case, Rood's argument fails.

[Case citation omitted]

LEGAL UPDATE EDITOR'S COMMENT AND RESEARCH NOTE: I would be surprised to see this appellate case end with this unpublished appellate court decision. I would guess that the defense will move to publish, then seek Washington Supreme Court review, and then consider their options after that. The "initiation of contact" subject area has been a particular interest of mine and also a particular interest of the United States Supreme Court for over 30 years. See my article on the "Initiation of Contact Rule" that is updated annually and is accessible on the Criminal Justice Training Commission's Law Enforcement Digest web page. My understanding of the case law on the U.S. Supreme Court's Miranda-based initiation-of-contact rule is that a statement like that allegedly made by the detective in this case does not evaporate in 80 minutes and cannot be so readily dismissed based on defendant-voluntariness-analysis as was done by the Court of Appeals in this case. My personal thinking (not advice, of course) is that officers are well-advised against making such a statement about how an accomplice is throwing the suspect under the bus, even if true, after the defendant has invoked Miranda rights, particularly the right to an attorney.

The Opinion in State v. Clara Marjorie Rood can be accessed on the Internet at:
https://www.courts.wa.gov/opinions/pdf/D2%2055199-3-II%20Unpublished%20Opinion.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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