Law Enforcement Digest

MARCH 2010

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Law enforcement officers: Thank you for your service, protection and sacrifice.

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655th Basic Law Enforcement Academy –September 29, 2009 through February 9, 2010

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Best Overall: Stephanie L. McKinney – Seattle Police Department
Best Academic: Stephanie L. McKinney – Seattle Police Department
Best Firearms: Anthony J. Reynolds – Seattle Police Department
Tac Officer: Officer Tony Nowacki – Des Moines Police Department

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UNITED STATES SUPREME COURT

OFFICERS HELD JUSTIFIED IN FORCING ENTRY OF RESIDENCE UNDER THE FOURTH AMENDMENT'S PURELY OBJECTIVE TEST FOR THE EMERGENCY AID EXCEPTION TO THE WARRANT REQUIREMENT; BEWARE, HOWEVER: THE TESTS FOR THE EMERGENCY AID AND COMMUNITY CARETAKING EXCEPTIONS TO THE WARRANT REQUIREMENT UNDER THE WASHINGTON CONSTITUTION INCLUDE A SUBJECTIVE AND/OR NO-PRETEXT COMPONENT

Michigan v. Fisher, 130 S. Ct. 546 (2009)

Facts and Proceedings below: (Excerpted from Supreme Court opinion)

> Police officers responded to a complaint of a disturbance near Allen Road in Brownstown, Michigan. Officer Christopher Goolsby later testified that, as he

and his partner approached the area, a couple directed them to a residence where a man was "going crazy." Upon their arrival, the officers found a household in considerable chaos: a pickup truck in the driveway with its front smashed, damaged fence posts along the side of the property, and three broken house windows, the glass still on the ground outside. The officers also noticed blood on the hood of the pickup and on clothes inside of it, as well as on one of the doors to the house. (It is disputed whether they noticed this immediately upon reaching the house, but undisputed that they noticed it before the allegedly unconstitutional entry.) Through a window, the officers could see respondent, Jeremy Fisher, inside the house, screaming and throwing things. The back door was locked, and a couch had been placed to block the front door.

The officers knocked, but Fisher refused to answer. They saw that Fisher had a cut on his hand, and they asked him whether he needed medical attention. Fisher ignored these questions and demanded, with accompanying profanity, that the officers go to get a search warrant. Officer Goolsby then pushed the front door partway open and ventured into the house. Through the window of the open door he saw Fisher pointing a long gun at him. Officer Goolsby withdrew.

Fisher was charged under Michigan law with assault with a dangerous weapon and possession of a firearm during the commission of a felony. The trial court concluded that Officer Goolsby violated the Fourth Amendment when he entered Fisher's house, and granted Fisher's motion to suppress the evidence obtained as a result – that is, Officer Goolsby's statement that Fisher pointed a rifle at him. The Michigan Court of Appeals initially remanded for an evidentiary hearing, after which the trial court reinstated its order. The Court of Appeals then affirmed over a dissent by Judge Talbot. The Michigan Supreme Court granted leave to appeal, but, after hearing oral argument, it vacated its prior order and denied leave instead; three justices, however, would have taken the case and reversed on the ground that the Court of Appeals misapplied the Fourth Amendment.

ISSUE AND RULING: Was the entry by law enforcement officers justified under the Fourth Amendment's objective test for exigent circumstances, or emergency aid, in light of the U.S. Supreme Court's ruling in Brigham City v. Stuart, 547 U.S. 398 (2006) **July 06 LED:02**? (ANSWER: Yes, rules a unanimous Supreme Court)

Result: Reversal of Michigan state court rulings; case remanded for trial of Fisher on charges relating to his pointing a long gun at one of the officers.

ANALYSIS: (Excerpted from Supreme Court opinion)

"[T]he ultimate touchstone of the Fourth Amendment," we have often said, "is 'reasonableness.'" Therefore, although "searches and seizures inside a home without a warrant are presumptively unreasonable," that presumption can be overcome. For example, "the exigencies of the situation [may] make the needs of law enforcement so compelling that the warrantless search is objectively reasonable."

Brigham City v. Stuart, 547 U.S. 398 (2006) **July 06 LED:02** identified one such exigency: "the need to assist persons who are seriously injured or threatened with such injury." Thus, law enforcement officers "may enter a home without a warrant to render emergency assistance to an injured occupant or to protect an occupant from imminent injury." This "emergency aid exception" does not depend on the officers' subjective intent or the seriousness of any crime they are investigating when the emergency arises. It requires only "an objectively

reasonable basis for believing" that "a person within [the house] is in need of immediate aid."

Brigham City illustrates the application of this standard. There, police officers responded to a noise complaint in the early hours of the morning. "As they approached the house, they could hear from within an altercation occurring, some kind of fight." Following the tumult to the back of the house whence it came, the officers saw juveniles drinking beer in the backyard and a fight unfolding in the kitchen. They watched through the window as a juvenile broke free from the adults restraining him and punched another adult in the face, who recoiled to the sink, spitting blood. Under these circumstances, we found it "plainly reasonable" for the officers to enter the house and quell the violence, for they had "an objectively reasonable basis for believing both that the injured adult might need help and that the violence in the kitchen was just beginning."

A straightforward application of the emergency aid exception, as in Brigham City, dictates that the officer's entry was reasonable. Just as in Brigham City, the police officers here were responding to a report of a disturbance. Just as in Brigham City, when they arrived on the scene they encountered a tumultuous situation in the house, and here they also found signs of a recent injury, perhaps from a car accident, outside. And just as in Brigham City, the officers could see violent behavior inside. Although Officer Goolsby and his partner did not see punches thrown, as did the officers in Brigham City, they did see Fisher screaming and throwing things. It would be objectively reasonable to believe that Fisher's projectiles might have a human target (perhaps a spouse or a child), or that Fisher would hurt himself in the course of his rage. In short, we find it as plain here as we did in Brigham City that the officer's entry was reasonable under the Fourth Amendment.

The Michigan Court of Appeals, however, thought the situation "did not rise to a level of emergency justifying the warrantless intrusion into a residence." Although the Court of Appeals conceded that "there was evidence an injured person was on the premises," it found it significant that "the mere drops of blood did not signal a likely serious, life-threatening injury." The court added that the cut Officer Goolsby observed on Fisher's hand "likely explained the trail of blood" and that Fisher "was very much on his feet and apparently able to see to his own needs."

Even a casual review of Brigham City reveals the flaw in this reasoning. Officers do not need ironclad proof of "a likely serious, life-threatening" injury to invoke the emergency aid exception. The only injury police could confirm in Brigham City was the bloody lip they saw the juvenile inflict upon the adult. Fisher argues that the officers here could not have been motivated by a perceived need to provide medical assistance, since they never summoned emergency medical personnel. This would have no bearing, of course, upon their need to assure that Fisher was not endangering someone else in the house. Moreover, even if the failure to summon medical personnel conclusively established that Goolsby did not subjectively believe, when he entered the house, that Fisher or someone else was seriously injured (which is doubtful), the test, as we have said, is not what Goolsby believed, but whether there was "an objectively reasonable basis for believing" that medical assistance was needed, or persons were in danger, Brigham City . . . .

> It was error for the Michigan Court of Appeals to replace that objective inquiry into appearances with its hindsight determination that there was in fact no emergency. It does not meet the needs of law enforcement or the demands of public safety to require officers to walk away from a situation like the one they encountered here. Only when an apparent threat has become an actual harm can officers rule out innocuous explanations for ominous circumstances. But "[t]he role of a peace officer includes preventing violence and restoring order, not simply rendering first aid to casualties." Brigham City. It sufficed to invoke the emergency aid exception that it was reasonable to believe that Fisher had hurt himself (albeit nonfatally) and needed treatment that in his rage he was unable to provide, or that Fisher was about to hurt, or had already hurt, someone else. The Michigan Court of Appeals required more than what the Fourth Amendment demands.
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> The petition for certiorari is granted. The judgment of the Michigan Court of Appeals is reversed, and the case is remanded for further proceedings not inconsistent with this opinion.

[Some citations omitted]

LED EDITORIAL COMMENTS: As we said in the July 2006 LED in our comments about the U.S. Supreme Court's analysis in the Brigham City case, we believe that the Washington courts would inject a subjective component into the analysis under the Washington constitution in a case with these facts. Washington decisions addressing the emergency aid exception and community caretaking rule have held that the tests contain a subjective element. See, for example, the Washington Court of Appeals decision in State v. Hos digested below in this LED beginning at page 16.

The Washington Supreme Court has declared that article I, section 7 of the Washington constitution includes a subjective element in the "community caretaking" doctrine relating to "emergency searches." See State v. Kinzy, 141 Wn.2d 373 (2000) Sept 00 LED:07; State v. Thompson, 151 Wn.2d 793 (2004) Aug 04 LED:13. Also relevant in this regard is the fact that the Washington Supreme Court has held that article I, section 7 – unlike the Fourth Amendment – includes a "pretext" prohibition on police stops of traffic violators for minor violations (see State v. Ladson, 139 Wn.2d 343 (1999) Sept 99 LED:05) and includes a pretext prohibition on at least some forcible entries to arrest persons on arrest warrants (see State v. Hatchie, 161 Wn.2d 390 (2007) Oct 07 LED:06). The Washington Supreme Court has even stated that the exigent circumstances exception to the warrant requirement does not apply if the warrantless entry is pretextual. State v. Smith, 165 Wn.2d 511 (2009) March 09 LED:10. So Washington officers should be ready to explain – in suppression hearings in cases with facts like those in the Brigham City case – that they were in fact motivated (assuming it is so, of course) by the emergency aid need or community caretaking consideration that also objectively justified their entry.

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NINTH CIRCUIT, U.S. COURT OF APPEALS

TASER USE HELD REASONABLE ON THE TOTALITY OF THE CIRCUMSTANCES

Mattos v. Agarano, 590 F.3d 1082 (9th Cir. 2010) (decision filed January 12, 2010)

Facts and Proceedings below:

On August 23, 2006, sometime after 11 p.m., a domestic disturbance broke out between Jayzel and Troy Mattos at their home. During the fight, Jayzel asked her fourteen-year-old daughter, Cheynice, to call the police. Cheynice told the dispatcher that Jayzel and Troy were engaged in a physical altercation and that things were being thrown around. Officers Agarano, MacKnight, Kunioka, and Aikala responded to the 911 call. When the officers arrived, they found Troy, a six-foot-three-inch tall man weighing approximately 200 pounds, sitting at the top of the stairs just outside the front door of a second story residence with two bottles of beer lying nearby. Based on the beer bottles and the smell of alcohol, Officer Kunioka believed that Troy was intoxicated. When Kunioka approached and asked Troy what had happened, Troy responded that he and his wife had argued but that the argument had not gotten physical. Kunioka asked Troy to get Jayzel so that they could talk to her and make sure she was safe.

The parties differ in their accounts of what follows, but at this stage of the litigation, we take the facts in the light most favorable to the plaintiffs.

Troy entered his home to get Jayzel, and Officer Agarano stepped inside the doorway. When Troy returned with Jayzel, Troy became upset that Agarano was in his house, and he demanded that the officers leave, insisting that they had no right to be in the house and yelling profanities at them. The officers asked Jayzel to speak to them outside. Jayzel agreed and asked her husband and the officers to calm down and not wake her sleeping children. Aikala then entered the hallway area to arrest Troy, who was still yelling at the officers. Jayzel asked Aikala why her husband was being arrested and again asked that the officers and her husband calm down, leave the house, and not disturb her children.

At this point, Jayzel was cornered between the officers and her husband - Officer Agarano was in front of her, Officer Aikala was at her right, and her back was against her husband's chest. Aikala moved to apprehend Troy and bumped against Jayzel. Feeling uncomfortable and exposed with Aikala squarely in front of her, Jayzel raised her hands, palms forward at her chest, to "keep [Aikala] from flushing his body against [hers]." Jayzel agrees that both of her hands touched Aikala's chest, but asserts that she did not put her hands up until Aikala was pressed up against her.

Aikala immediately stepped back and asked Jayzel if she was touching an officer. Jayzel testified that she was scared and again implored everyone to calm down and not wake her children. At that moment, Jayzel felt a pinch on the back of her right hand and then felt "an incredible burning and painful feeling locking all of [her] joints," she heard herself scream, and felt herself fall to the floor. Aikala had tased Jayzel and cycled it for five seconds.

Jayzel and Troy were taken into custody; both were charged with harassment, while Troy was charged with resisting arrest and Jayzel with obstructing government operations. A state court judge dismissed the charges against Jayzel, and it appears that the State later dropped all criminal charges against Troy.

ISSUE AND RULING: Under the use-of-force principles announced by the Ninth Circuit in Bryan v. McPherson, 590 F.3d 767 (9th Cir. 2009) **Feb 10 LED:02,** and in Graham v. Connor, 490 U.S. 386 (1989), was the officer reasonable in using a Taser against the wife in this domestic-violence-response case, given, among other things, (1) the close quarters in which the officers and the plaintiffs encountered each other, and (2) the intoxicated state the husband was

in, which indicated that the officers faced a very real threat of immediate harm? (ANSWER: Yes, the use of the Taser against the wife was reasonable)

Result: Reversal of U.S. District Court (Hawaii) denial of summary judgment to Maui police officers.

ANALYSIS: (Excerpted from Ninth Circuit opinion)

> Although we find the question to be a close one, on this record, we cannot conclude that the officers used excessive force in violation of the Fourth Amendment.
>
> The Fourth Amendment guarantees "[t]he right of the people to be secure in their persons . . . against unreasonable searches and seizures". When a plaintiff claims that she was not "secure in [her] person" because law enforcement officers used excessive and, therefore, "unreasonable" force in the course of an arrest, we balance " 'the nature and quality of the intrusion on the individual's Fourth Amendment interests' against 'the countervailing government interests at stake.' " We have held that we conduct this inquiry in a three-step analysis. "First, we assess the gravity of the particular intrusion on Fourth Amendment interests by evaluating the type and amount of force inflicted." Second, we analyze "the importance of the government interests at stake by evaluating: (1) the severity of the crime at issue, (2) whether the suspect posed an immediate threat to the safety of the officers or others, and (3) whether the suspect was actively resisting arrest or attempting to evade arrest by flight." At this stage of the analysis, we may also consider other factors, such as "the availability of alternative methods of capturing or subduing a suspect." Finally, we weigh the gravity of the intrusion against the government's interest to determine whether the force used was constitutionally reasonable.
>
> We first evaluate the type and amount of force inflicted. The problem here is that, even with the benefit of some briefing and argument on the subject, it is difficult for us to opine with confidence regarding either the quantum of force involved in a deployment of a Taser gun or the type of force inflicted. The defendants paint a benign portrait of the Taser, offering evidence that it has been used on over one million human subjects and has proven extremely safe, as well as evidence that the actual voltage applied to a subject's body uses less electricity than a single bulb on a string of Christmas tree lights. This testimony, however, may advise that we be more careful with our Christmas tree lights than describe the harmlessness of a Taser stun.
>
> The plaintiffs, for their part, have not offered any evidence about the kind of force or injury a Taser inflicts. Nor have they provided evidence that would permit us to assess the severity of any injuries Jayzel suffered from the Taser. Jayzel described the experience as "[i]ncredibly painful," "last[ing] for what seemed like forever," and analogized the pain to child labor. But although she claims to have suffered injuries as a result of the incident, the plaintiffs have not offered any evidence of these injuries; Jayzel removed the Taser's prongs herself and then refused medical treatment at the scene.
>
> On the other hand, the defendant's expert conceded that a Taser in the drive stun mode "induce[s] subject control through pain compliance if the person responds to painful stimulus," and that it "stimulates nerves that control the motor muscles which ... result[s] in subject incapacitation." On this record then, we are

left with evidence that the Taser, in general, is more than a non-serious or trivial use of force but less than deadly force. Unfortunately, there is a lot of room between these end points. In this case, we know that the Taser was sufficient force to drive Jayzel to her knees in seconds and cause her to scream with pain. Although the record on this point is not as developed as we could hope for, viewing the evidence in the light most favorable to Jayzel, we have no difficulty concluding that the Taser stun was a serious intrusion into the core of the interests protected by the Fourth Amendment: the right to be "secure in [our] persons."

We next analyze the importance of the government interest in using a Taser and weigh the gravity of the intrusion against the government interest. First, we consider the severity of the crime. When Aikala announced that Troy was under arrest, Jayzel was between the officers and her husband. She did not move from her protective position, asking why Troy was under arrest and requesting that the officers proceed outside. Aikala reached for Troy and made contact with Jayzel. When Aikala immediately asked her if she was touching an officer, Jayzel did not directly respond nor did she move from her position but instead asked him to calm down and be quiet because her children were sleeping. It was at this point that Aikala deployed the Taser on Jayzel, and the other officers arrested Troy. In the light most favorable to Jayzel, her actions in obstructing the officers, although inappropriate, did not constitute a serious crime. Her contact with Aikala appears to have been incidental and due mainly to the cramped quarters in which the Mattoses and the officers found themselves rather than to any intention on Jayzel's part to interfere with the officers. Additionally, however, we must take into account Troy's actions. He was belligerent and appeared to be intoxicated. As explained by the 911 call, Troy's conduct that evening was a threat to Jayzel, and in his intoxicated condition, Troy posed a threat to the officers as well. Thus, Jayzel herself may have posed little threat, but any interference she caused only heightened the danger Troy represented. As the district court found, Jayzel's actions "exacerbated an already tense, and rapidly escalating situation." On balance then, Jayzel's actions were not a serious crime, but as we discuss below, carried the potential for a far more serious crime-assault on an officer.

The second factor we consider in evaluating the government interest is the threat to the officers' safety. We view the officers' safety as "the most important of the three Graham factors." Here, the officers were called to respond to a fourteen-year-old girl's 911 call reporting domestic violence. We have observed that "[t]he volatility of situations involving domestic violence" makes them particularly dangerous. "When officers respond to a domestic abuse call, they understand that violence may be lurking and explode with little warning. Indeed, more officers are killed or injured on domestic violence calls than on any other type of call." While a drunken Troy screamed profanities at the police, Jayzel repeatedly asked that the officers exit the house even though, as the district court found, they had probable cause to enter the residence. When the officers moved to arrest Troy, Jayzel made contact with Aikala. Although Jayzel's actions may have been well-intentioned, or even innocent, they came precisely when the officers moved to arrest Troy. Aikala then tased Jayzel, and the other officers arrested Troy.

In assessing the danger the police confronted, we keep in mind the Supreme Court's guidance in Graham v. Connor:

> The reasonableness of a particular use of force must be judged from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight . . . . [P]olice officers are often forced to make split-second judgments-in circumstances that are tense, uncertain, and rapidly evolving-about the amount of force that is necessary in a particular situation.

Thus, we must take account of the circumstances as they were for the officers at the Mattoses' residence on that night. Given the dangerous nature of domestic violence situations, the close quarters in which the officers and the Mattoses were contained, Troy's intoxicated state, and the contact made between Jayzel and Aikala, there was the risk of immediate threat to the safety of the officers. This factor weighs heavily in favor of the government.

Third, we consider whether the "suspect was actively resisting arrest or attempting to evade arrest by flight." Jayzel's actions prevented the officers from arresting Troy. She was in front of her husband and demanded to know why he was being arrested. She made contact with Aikala as he tried to reach across her to apprehend Troy. Her actions prevented the officers from arresting Troy, and the officers could use reasonable force to move her away from the arrest. Although there may have been alternative methods of forcefully moving Jayzel out of the way, officers are not required to use the least amount of force necessary. This factor also weighs in the government's favor. This combination of the severity of the crime, the threat to the officers, and the magnitude of the resistance tips decisively in the officers' favor. This was potentially an explosive situation. With all of the participants in close contact in a small room, there was real danger that if Troy could not be subdued then someone-including Jayzel-might be injured. In such circumstances, the officers had an important interest in obtaining immediate control.

Finally, in weighing the gravity of the Fourth Amendment intrusion against the government's interest, we conclude that the force used against Jayzel was reasonable within the meaning of the Fourth Amendment. Even though we find that use of a Taser represents a serious intrusion on interests protected by the Fourth Amendment, we recognize that in responding to a domestic violence call, the officers confronted a dangerous and volatile situation. When an intoxicated Troy began yelling profanities at the officers and demanding that they leave, the officers felt the need to arrest him to finish their investigation and diffuse the situation. Because Jayzel interfered with Troy's arrest and, in doing so, made contact with Aikala, Aikala was justified in removing her from Troy's side. Although an alternative method of force may have been advisable, the Fourth Amendment does not require an officer to use the minimum amount of force necessary to move Jayzel and arrest Troy. In this heated situation, Aikala's deployment of a Taser did not violate Jayzel's constitutional rights.

LED EDITORIAL NOTE: Readers may wish to read the comments regarding the Ninth Circuit decision in Bryan v. McPherson (Feb 10 LED:02) in the February 2010 publication of the Americans for Effective Law Enforcement, a highly reputed non-profit organization, at: http://www.aele.org/alert-email.html

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BRIEF NOTE FROM THE NINTH CIRCUIT, U.S. COURT OF APPEALS

SEARCH OF CAR VIOLATED GANT, BUT EVIDENCE HELD ADMISSIBLE UNDER FOURTH AMENDMENT'S "INEVITABLE DISCOVERY" EXCEPTION TO EXCLUSIONARY RULE (AN EXCEPTION TO EXCLUSION THAT APPARENTLY DOES NOT APPLY UNDER WASHINGTON CONSTITUTION) – In U.S. v. Ruckes, 586 F.3d 713 (9th Cir. 2009) (decision filed November 9, 2009), the Ninth Circuit holds that a 2006 search of a car incident to arrest was not justified under the rule subsequently announced in Arizona v. Gant, 129 S.Ct. 1710 (2009) **June 09 LED:13**, but that the evidence seized from the car is nonetheless admissible under the inevitable discovery doctrine on the theory that an impound-inventory would have led to discovery of the illegal drugs and the firearm seized in the case.

The arrest in the case was for DWLS following a traffic stop, and there was no evidence that the arresting officer had a reasonable belief that evidence of DWLS would be found in the car. Therefore, under Gant, the officer was not authorized to search the car incident to arrest.

The Ninth Circuit's discussion of the facts relating to the search is as follows:

> [The WSP trooper] . . . further explained [to Ruckes] that because Ruckes had been ticketed for driving on a suspended license in the past, it was permissible to impound the car for thirty days. He asked if anyone else was available to take control of the vehicle, and Ruckes admitted that while the car belonged to his mother, she would probably be unable to remove it from the side of the freeway. [The trooper] testified at the suppression hearing that he would not have permitted Ruckes to drive the car away due to his suspended license, and though he might have considered permitting the owner – Ruckes's mother – to take possession of the vehicle, she was unavailable to do so. At the conclusion of the hearing, the district court found that [the trooper] was going to impound Ruckes's car.
>
> [The trooper] then proceeded to conduct a search of the vehicle. Following this first search, he returned to the patrol car and placed Ruckes in handcuffs. By way of explanation, [the trooper] noted that he initially found a large bottle of crack cocaine sitting in the vehicle's center consol. [The trooper] again left the patrol car, and continued searching Ruckes's automobile, where he next uncovered a loaded 9mm handgun under the driver's seat.

The Ninth Circuit's legal analysis of the inevitable discovery issue is as follows:

> "The inevitable discovery doctrine is an exception to the exclusionary rule." The doctrine permits the government to rely on evidence that ultimately would have been discovered absent a constitutional violation. "The purpose of the inevitable discovery rule is to block setting aside convictions that would have been obtained without police misconduct." As the Court explained, "[i]f the prosecution can establish by a preponderance of the evidence that the information ultimately or inevitably would have been discovered by lawful means[,] . . . then the deterrence rationale [for the exclusionary rule] has so little basis that the evidence should be received."
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> Here we must ask whether the government has shown that the firearm and illicit substances would have been uncovered by law enforcement officers through some permissible means. Judge Burgess did not err in finding that the government had met its burden on this alternative ground.
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> In Washington, "[a] vehicle may lawfully be impounded if authorized by statute or ordinance. 'In the absence of statute or ordinance, there must be reasonable cause for the impoundment.'" The Washington State Patrol is expressly

> authorized "to impound a vehicle when, among other things, the driver is arrested for [driving with license suspended]." It is clear that an officer may "take custody of a vehicle, at his or her discretion" if it is "unattended upon a highway where the vehicle constitutes an obstruction to traffic or jeopardizes public safety." Wash. Rev. Code § 46.55.113(2)(b). Additionally, "[p]olice officers may conduct a good faith inventory search following a lawful impoundment without first obtaining a search warrant."
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> This was a permissible inventory search under Washington law. [The trooper] explained to Ruckes that the car could be impounded for thirty days because Ruckes had been caught driving on a suspended license. Then, during his testimony at the suppression hearing, [the trooper] informed Judge Burgess that because no one was available to remove the car from the side of Interstate Highway 5, it was standard procedure to impound it. An inventory search would have necessarily followed. We therefore hold that, while the search cannot be upheld as incident to arrest in light of Gant, the deterrent rationale for the exclusionary rule is not applicable where the evidence would have ultimately been discovered during a police inventory of the contents of Ruckes's car.
>
> We emphasize, however, that the inevitable discovery doctrine will not always save a search that has been invalidated under Gant. The government is still required to prove, by a preponderance of the evidence, that there was a lawful alternative justification for discovering the evidence. "[I]nevitable discovery involves no speculative elements but focuses on demonstrated historical facts capable of ready verification or impeachment." Therefore, while the government met its burden here, the district court must conduct a case-by-case inquiry to determine whether a lawful path to discovery – such as inevitability – exists in each case. To hold otherwise would create an impermissible loop-hole in the Court's bright-line Gant determination.

[Some citations omitted]

Result: Affirmance of U.S. District Court (Western Washington) conviction of Adrick Elijah Ruckes for being a felon in possession of a firearm and possessing cocaine base with intent to distribute.

LED EDITORIAL COMMENTS: 1. The inevitable discovery exception to the exclusionary rule. The Fourth Amendment case law continues to include an inevitable discovery exception to application of the exclusionary rule. A recent Washington Supreme Court decision in State v. Winterstein – addressed in the February 2009 LED beginning at page 24 – casts great doubt on the application of the inevitable discovery theory under article I, section 7 of the Washington constitution.

2. Scope of inventory under the Washington constitution. In the Ruckes case, the Ninth Circuit does not go into detailed analysis of Washington case law limiting the scope of inventories. Under article I, section 7, Washington officers are generally not permitted – absent facts providing a "manifest necessity" to do so – to (1) look in a locked trunk or (2) inspect the contents of closed, unattached containers which can be inventoried and stored without opening them. See State v. White, 135 Wn.2d 761 (1998) Sept 98 LED:08 (re locked trunk – ruling that, even though the trunk could be unlocked with a button inside the passenger area, it was still off limits because there were no facts indicating a "manifest necessity to inspect the contents); State v. Dugas, 109 Wn. App. 592 (Div. I, 2001) March 02 LED:02 (re unattached, closed container). The locations where the officer found the gun and drugs in Ruckes were apparently (1) an open or

unlocked console and (2) an area under the front seat. These would be areas into which a Washington officer could go in conducting an inventory under the Washington constitution.

3. Impounds and the Washington constitutional requirement for considering reasonable alternatives. Officers should remember that under circumstances where RCW 46.55.113 authorizes the impound of a vehicle, they must still exercise discretion and consider reasonable alternatives to impound. Although the Ninth Circuit in Ruckes states that "The Washington State Patrol is expressly authorized 'to impound a vehicle when, among other things, the driver is arrested for [DWLS]'"and that "It is clear that an officer may 'take custody of a vehicle, at his or her discretion' if it is 'unattended upon a highway where the vehicle constitutes an obstruction to traffic or jeopardizes public safety'", citing RCW 46.55.113(2)(b), Washington law is very clear that prior to each impoundment officers must first consider reasonable alternatives to impound. See e.g., All Around Underground v. Washington State Patrol, 148 Wn.2d 145 (2002) Feb 03 LED:02 (construing RCW 46.55.113(2)(b) to require such individualized consideration). In Ruckes it appears that the trooper met his responsibility, i.e., attempting to determine if anyone else was available to remove the vehicle. Failure to consider reasonable alternatives to impound can (and does) result in significant liability to law enforcement agencies either as a result of lost impound hearings or as a result of civil lawsuits. See e.g., Potter v. Washington State Patrol, 165 Wn.2d 67 (2008) (Potter II) Jan 09 LED:03.

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BRIEF NOTES FROM THE WASHINGTON STATE SUPREME COURT

(1) USER'S "AUTHORIZATION FORM" RE "MEDICAL USE OF MARIJUANA ACT" DOES NOT STOP SEARCH UNDER A WARRANT (THIS TIME, AT LEAST) – In State v. Fry, ___ Wn.2d ___, ___ P.3d ___, 2009 WL 185857 (2009), the Washington Supreme Court, in a 4-4-1 split decision, upholds the felony marijuana possession conviction of a marijuana grower, but the split voting means that the Court does not set a binding precedent on the search and seizure issue before the Court – i.e., whether the Medical Use of Marijuana Act affects analysis of probable cause to search a residence of a person who is authorized to use marijuana under the Act.

Officers received information that Fry was growing marijuana in his home (apparently however, the trial court record in this case does not include any information about the source or reliability of that information). During their investigation, they went to his home where the smell of burning marijuana wafted outside to where they were lawfully standing. Fry's wife presented the officers with a form relating to her husband that was titled "Documentation of Medical Authorization to Possess Marijuana for Medical Purposes in Washington." See chapter 69.51A RCW, Medical Use of Marijuana Act.

The officers obtained a search warrant, searched Fry's home, and found an extensive marijuana grow operation (including about two pounds of marijuana). Fry was charged with felony possession, and he moved to suppress the marijuana. He did not contest that the officers' warrant application, taken without consideration of his special theory, had not shown probable cause to believe that there was marijuana in his home. Rather, he argued that where officers knew of his "authorization form," (1) they no longer had probable cause or (2) they at least needed probable cause to believe that he possessed more than a 60-day supply. The Superior Court judge denied his motion to suppress, and the Court of Appeals affirmed that decision. See **March 08 LED:22**.

The Supreme Court accepted discretionary review, but, as noted, entered a split decision that did not resolve the issue under Mr. Fry's theory of special probable cause. Justice Jim Johnson, joined by Justices Madsen, Alexander, and Fairhurst, authors the lead opinion. The lead opinion agrees with the Court of Appeals. The lead opinion analogizes this case to the case of State v. McBride, 95 Wn. App. 33 (Div. III, 1999) **Oct 99 LED:16**, in which the Court of Appeals held that an affirmative defense – self-defense in the McBride case – does not negate probable cause to arrest or to search. Medical use of marijuana is an affirmative defense and should be treated the same as other affirmative defenses, the lead opinion concludes.

Justice Chambers authors a concurring opinion that is joined by Justices Stephens, Owens and Charles Johnson. On the search and seizure issue relating to probable cause and the Medical Use of Marijuana Act, the concurrence contains no analysis and merely states that the judges agree with "the result only" of the lead opinion. Justice Sanders is once again a lone dissenter, arguing that special probable cause is required in light of the Medical Use of Marijuana Act.

Result: Affirmance of Court of Appeals decision that affirmed the Stevens County Superior Court conviction of Jason Lee Fry for felony possession of marijuana.

LED EDITORIAL NOTES: 1. Covered-condition issue in Fry: There was also an issue of whether the jury should have been allowed to determine whether Fry's alleged medical conditions of severe anxiety, rage and depression (and perhaps others) qualified under chapter 69.51A RCW as covered conditions. The lead opinion says no, but the concurrence says generally yes, though not in this case because Fry conceded at trial court that his condition did not qualify. Justice Sanders agrees with the concurrence that generally the question of whether a condition qualifies is a jury question.

2. Officers need not always seize everything: While the 2007 amendments to RCW 69.51A.040 (briefly summarized in the July 2007 LED) were not implicated in this case that involved an extensive grow operation, we remind LED readers that the 2007 amendments inserted a new subsection 1 into RCW 69.51A.040 providing as follows:

> **If a law enforcement officer determines that marijuana is being possessed lawfully under the medical marijuana law, the officer may document the amount of marijuana, take a representative sample that is large enough to test, but not seize the marijuana. A law enforcement officer or agency shall not be held civilly liable for failure to seize marijuana in this circumstance.**

3. Recent action of Medical Quality Assurance Commission: Note also that on January 15, 2010, Washington's Medical Quality Assurance Commission denied a petition to add bipolar disorder, severe depression, and anxiety-related disorders, including social phobia, to the covered medical conditions under chapter 69.51A.

LED EDITORIAL COMMENT: For now, the Washington search and seizure rule remains that the affirmative defense of medical marijuana use does not in any way negate probable cause to search a residence. But we do worry that in a future case the four justices in the Fry concurrence could all tip in favor of the special probable cause rule that Sanders advocates in his dissent. Only time, and maybe judicial elections, will tell.

(2) BENCH WARRANT FOR FAILURE TO APPEAR AT PROBATION VIOLATION HEARING NEED NOT BE SUPPORTED BY PROBABLE CAUSE – In State v. Erickson, ___ Wn.2d ___, __ P.3d ___, 2010 WL 185944 (2010), the Washington Supreme Court unanimously rejects the argument of the defendant that the government need not establish probable cause as to an alleged probation violation to support a bench warrant for failure to appear at a probation violation hearing. A unanimous Court holds: 1) that only a well-formed

suspicion of violation of the terms of probations is required, and 2) that a return of a summons – where defendant had moved and left no forwarding address – meets that requirement. In its "conclusion," the Supreme Court's opinion summarizes the Court's ruling as follows:

> Once a person has been convicted of a crime, that person is subject to the court's authority. That authority includes the power to supervise an offender conditionally released. Neither the Fourth Amendment nor article I, section 7 of the state constitution requires the court to make a finding of probable cause at every step of the proceeding. We hold that once a person has been convicted of a felony and is on conditional release for that offense, a bench warrant may be issued for his arrest without probable cause that he has violated the terms of his release. Instead, the court needs only a well-founded suspicion that a violation of the terms of the release has occurred before it may issue an arrest warrant. Here, one of the conditions of Erickson's release was that he notify the court of any change of address. He did not do so and the returned summons provided the issuing judge with a well-founded suspicion that Erickson had violated that condition of his release. We affirm the Court of Appeals and Erickson's conviction for possession of a controlled substance.

Result: Affirmance of decision of Division One of the Court of Appeals (**June 08 LED:21**) affirming conviction of Anthony Jay Erickson for possession of a controlled substance (seized when an officer searched Erickson's person following an arrest on the bench warrant).

(3) JUDGE'S ORDER TO DEPUTY SHERIFF TO ESCORT PRISONER FROM COURTROOM TO JAIL DID NOT GIVE THE DEPUTY "JUDICIAL IMMUNITY" FROM A CIVIL SUIT FOR NEGLIGENCE WHEN THE PRISONER ESCAPED EN ROUTE TO JAIL AND CAUSED INJURY TO A COURTHOUSE SECURITY GUARD – In Lallas v. Skagit County, ___ Wn.2d ___, ___ P.3d ___, 2009 WL 5155423 (2009), the Supreme Court unanimously affirms the Court of Appeals decision reported at 144 Wn. App. 114 (Div. I, 2008) **Oct 08 LED:23**. The Supreme Court rules that a deputy sheriff and Skagit County are not entitled to judicial immunity from a negligence lawsuit. The lawsuit arose from circumstances where the deputy was carrying out a judge's order to escort a convict from the courthouse to the jail. The judge did not tell the deputy how to do the escort, simply to take the convict to the jail. The convict escaped from the deputy's control and injured a security guard in the process of escaping.

Judicial immunity is generally narrow and limited to protecting judges and persons performing judicial functions on behalf of judges. Such immunity exists so that such persons will not be deterred from carrying out judicial duties. The Lallas Court holds that judicial immunity does not extend to law enforcement personnel whose job it is to provide courtroom security and escort prisoners, because that is not a judicial function.

Result: Affirmance of reversal by Court of Appeals of Snohomish County Superior Court summary judgment order; remand of case for trial.

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WASHINGTON STATE COURT OF APPEALS

OFFICER'S STREET CONTACT AND REQUEST FOR INFORMATION AND IDENTIFICATION HELD NOT A "SEIZURE" – PRETEXTUAL OR OTHERWISE

State v. Bailey, ___ Wn. App. ___, ___ P.3d ___, 2010 WL 348186 (Div. III, 2010)

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

> An officer saw James Bailey walking along an otherwise deserted street in Yakima, Washington. He asked Mr. Bailey "if he had a minute." The officer had to repeat his question for Mr. Bailey to hear him. Mr. Bailey responded affirmatively and walked toward the officer. The officer questioned Mr. Bailey to determine "if he had business in there or if he was legitimately headed somewhere." He asked Mr. Bailey where he was going and what he was up to. Mr. Bailey explained that he was on his way to a friend's house. The officer then asked him for his identification. Mr. Bailey gave the officer his identification and, as soon as he did, advised the officer that he likely had an outstanding warrant. The officer verified that Mr. Bailey had an outstanding warrant and arrested him. The officer searched Mr. Bailey incident to arrest and found two and one-half grams of methamphetamine in his glove.
>
> The State charged Mr. Bailey with one count of possession of a controlled substance — methamphetamine. Mr. Bailey moved to suppress the evidence on the grounds that the stop was pretextual and the officer's arrest of Mr. Bailey was an unconstitutional seizure. The trial court held a hearing and concluded that Mr. Bailey was not free to walk away. So the court suppressed the drug evidence and dismissed the charge against Mr. Bailey.

ISSUES AND RULINGS: The officer and Bailey were on foot; and the officer merely asked Bailey whether he had a minute to talk, where he was going, and whether he would provide identification. Under the totality of the circumstances, did the officer seize Bailey under constitutional analysis? (ANSWER: No, this was a mere social contact);

2) Does the pretext stop rule of State v. Ladson apply to this contact? (ANSWER: No, there was no "stop" of Bailey for purposes of the Ladson test)

Result: Reversal of Yakima County Superior Court suppression ruling and remand for trial of James Joseph Bailey on charge of unlawful possession of methamphetamine.

ANALYSIS: (Excerpted from Court of Appeals opinion)

1) Unconstitutional Seizure?

> The Fourth Amendment to the United States Constitution protects individuals against unwarranted searches and seizures. Article I, section 7, of the Washington Constitution provides greater protection to individuals than the Fourth Amendment. A seizure occurs when "an individual's freedom of movement is restrained and the individual would not believe he or she is free to leave or decline a request due to an officer's use of force or display of authority." This is an objective standard. By contrast, "an encounter between a citizen and the police is consensual if a reasonable person under the circumstances would feel free to walk away." State v. Harrington, 2009 WL 4681239 (2009) **Feb 10 LED:17**. If a contact constitutes a seizure, that seizure must be based on "specific and articulable" objective facts that give rise to a reasonable suspicion. Terry v. Ohio, 392 U.S. 1 (1968). "[A] police officer who, as part of his community caretaking function, approaches a citizen and asks questions limited to eliciting that information necessary to perform that function has not 'seized' the citizen." State v. Gleason, 70 Wn. App. 13 (Div. III, 1993) **Oct 93 LED:15**. And an officer may ask for an individual's identification in the course of a casual

conversation. State v. Young, 135 Wn.2d 498 (1998) **Aug 98 LED:02**. Again, the key inquiry is whether the officer either uses force or displays authority in a way that would cause a reasonable person to feel compelled to continue the contact. Rankin, 151 Wn.2d at 695.

The Washington Supreme Court recently clarified the limitations of a "social contact" in Harrington. **Feb 10 LED:17**. There, the court held that, viewed cumulatively, a series of police actions that constitute a progressive intrusion into a person's private affairs are an unlawful seizure, even where the actions may separately pass constitutional muster. Although there are similarities between the facts of this case and those in Harrington, the degree of intrusion by the officer is less here. In Harrington, the police intrusion progressed as follows: (1) police officer, whose patrol car was not in sight, approached Mr. Harrington on foot and initiated conversation; (2) officer asked Mr. Harrington whether he had a minute to talk, and then where he was coming from; (3) officer asked Mr. Harrington, who was putting his hands into his bulging pockets, to remove his hands from his pockets; (4) second officer arrived and stood several feet from Mr. Harrington and the first officer; (5) first officer asked Mr. Harrington for permission to pat him down for officer safety, and Mr. Harrington consented; and (6) officer felt a methamphetamine pipe in Mr. Harrington's pocket, arrested him, and found the pipe and a bag of methamphetamine in a search incident to arrest. Here, no second officer joined [Officer A], and his intrusions into Mr. Bailey's privacy progressed only as far as the second stage of Harrington, plus the additional intrusion of asking for Mr. Bailey's identification. And, significantly, Mr. Bailey volunteered that he may have had an outstanding warrant as soon as he handed [Office A] his identification. At that point, the officer had the reasonable suspicion necessary to seize Mr. Bailey.

Mr. Bailey argues that his case is analogous to Gleason, 70 Wn. App. at 17. There, we found a seizure where two officers approached a person leaving an apartment complex known for drug activity. One of the officers approached Mr. Gleason from behind and called out, "'[C]an I talk to you a minute?'" The tone of the officer's requests in Gleason differentiated those requests or demands from the apparent tone of [Officer A]'s requests. Compare id. (officer called out from behind person*)* with RP at 9 (officer asked Mr. Bailey whether he wanted to talk to the officer, and Mr. Bailey walked toward him). In addition, in Gleason as in Harrington, two officers were present, creating more of an environment of investigation.

Mr. Bailey also relies on State v. Crane to support his position that the officer's actions amounted to a seizure. State v. Crane, 105 Wn. App. 301 (Div. I, 2001) **June 05 LED:08**, *overruled on other grounds by* State v. O'Neill, 148 Wn.2d 564 (2003) **Aug 03 LED:03**. In Crane, a police officer stopped Mr. Crane and two companions as they approached Mr. Crane's brother's house. He asked a series of questions very similar to the questions the officer asked here. However, Division Two of this court found that a seizure occurred — a reasonable person would not have felt free to leave — when the officer was holding the identification and running a records check. Here, Mr. Bailey volunteered that he had an outstanding warrant before the officer ran a records check.

The officer's first questions did not amount to a seizure. And, in light of relevant case law, none of the officer's subsequent questions transformed the situation into one in which Mr. Bailey objectively would no longer have felt free to leave. The officer did not use force or display authority to the same degree as cases in

which courts have found a seizure. *Compare* RP at 5-9 (the officer did not illuminate spotlight, emergency lights, or siren; asked Mr. Bailey whether he had a minute, first at a volume too low for Mr. Bailey to hear; and then asked only where Mr. Bailey was going and if he had any identification) *with, e.g.,* Harrington (one of two officers present asked person to remove his hands from his pockets and requested permission to pat him down).

2) Pretextual Stop?

Mr. Bailey also contends that we could affirm the trial court's suppression order on the ground that the officer conducted an unconstitutional pretextual stop under article I, section 7 of the Washington Constitution. State v. Ladson, 138 Wn.2d 343 (1999) **Sept 99 LED:05**. However, Ladson prohibits investigatory stops in which a stop and subsequent search for a traffic offense is used as a pretext for a criminal investigation. And, since the circumstances here fall within the "amorphous area in our jurisprudence" carved out for so-called social contacts, the officer's actions did not constitute an investigatory stop. Again, the officer did not illuminate his spotlight, emergency lights, or siren. He simply asked Mr. Bailey, who was on foot, whether he had a minute to talk, where he was going, and whether he would provide identification.

We reverse the order to suppress and remand for further proceedings.

[Some citations omitted]

LED EDITORIAL COMMENT: There is discussion in Bailey regarding the possible effect on the "seizure" analysis where an officer takes some action to control a person prior to checking for warrants during a social contact. This was something that the officer in Bailey did not need to do, because Bailey volunteered that he had an outstanding warrant and voluntarily stood by while the officer verified.

The law is clear that the mere fact, alone, that such a warrant check is done does not automatically transform a social contact into a seizure. See generally State v. Hansen, 99 Wn. App. 575 (Div. I, 2000) June 00 LED: 17 (No seizure occurred where: (1) Officer A requested ID; (2) Officer A handed the ID to Officer B and continued talking to the civilian without saying or doing anything to reflect a seizure; (3) Officer B recorded the information, handed the license back to the civilian within 30 seconds and called in for warrants; and (4) the officers continued to converse with the civilian in a non-coercive manner while waiting to get a radio response).

But if the officer does something more than occurred in Hansen to take control of the person before doing the warrants check, then that may transform the social contact into a seizure. See State v. Elwood, 52 Wn. App. 70 (Div. I, 1988) Nov 88 LED:05 (Telling FIR contact to "wait right here" – or taking ID and walking away – and stepping away to check for warrants is a seizure); State v. Crane, 105 Wn. App. 301 (Div. II, 2001) June 01 LED: 08 (Requesting ID and holding it for several minutes, while standing with subject, and checking by hand-held radio for outstanding warrants was "seizure" under totality of facts, and the seizure was not justified by the mere fact that the person had been observed approaching a residence as to which police were in the process of obtaining a search warrant).

COMMUNITY CARETAKING FUNCTION JUSTIFIED OFFICER'S WARRANTLESS ENTRY OF RESIDENCE TO SEE IF NON-RESPONSIVE, APPARENTLY UNCONSCIOUS, PERSON OBSERVED IN OPEN VIEW ON COUCH WAS IN NEED OF MEDICAL HELP

State v. Hos, __ Wn. App. __, __ P.3d __, 2010 WL 282371 (Div. II, 2010)

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

> On September 20, 2007, Child Protective Services (CPS) social worker Nicole Edwards asked law enforcement to accompany her to Rhonda Hos's residence to interview Hos about a CPS referral concerning her daughter. A sheriff's deputy knocked loudly on Hos's front door several times but received no response. He looked through a window near the front door and observed Hos sitting on a couch just a few feet from the door with her eyes closed and her head resting on her chest. He could not tell whether she was breathing; she seemed to be either unconscious or dead. Edwards also looked through the window and could not tell whether Hos was breathing. The deputy "pounded on the door hard to see if [he] could get a response," looked back through the window, and observed that Hos had not made any movements at all.
>
> Having observed no response to his pounding, the deputy opened the unlocked front door and yelled Hos's name. When he received no response, he entered the house, yelling, " 'Sheriff's office,' " as he approached Hos. Hos "slowly raised her head and looked around bleary eyed;" she appeared to the deputy to be intoxicated. Next to Hos on the couch, the deputy noticed a butane torch of the type that methamphetamine users commonly use. The deputy explained to Hos that he was there with Edwards from CPS.
>
> Edwards and Hos had a brief conversation, during which Edwards asked if she (Edwards) could look around the house and take pictures. Hos agreed that Edwards could look around, but Hos declined Edwards' invitation to accompany her.
>
> The deputy remained with Hos while Edwards looked around the house. The deputy noticed that Hos's pockets were "quite full with items," asked her if there was anything in her pockets he should be worried about, and then asked if she would empty her pockets. In response, Hos said she would empty her pockets and patted her pockets, first while sitting, then while standing. As she stood up, the deputy observed a methamphetamine pipe through an opening in her coat pocket, which became visible when she stood up and turned toward the deputy . He then arrested her for possession of drug paraphernalia, searched her incident to the arrest, and found a small purse in her pocket. This purse contained methamphetamine.
>
> The State charged Hos with one count of possession of a controlled substance (methamphetamine) and one count of third degree criminal mistreatment. Hos moved to suppress all evidence the deputy found following his warrantless entry into her house.
>
> At the suppression hearing, the deputy and Edwards testified as set out above. The deputy also testified that (1) he entered Hos's home because, after seeing her inert body through the window, he had serious concerns for her health; and (2) if the door had not been unlocked when he tried the knob, he would have "kicked the door in" to render aid. Edwards also testified that she was concerned about Hos's health and that if she (Edwards) had been alone at Hos's house, she would have "contacted law enforcement . . . and requested that they . . . and a paramedic respond."

> The trial court denied Hos's motion to suppress. It concluded that (1) the circumstances surrounding the deputy's entry met the medical emergency exception to the warrant requirement; (2) Hos impliedly consented to the deputy's remaining in the house after it became apparent there was not a medical emergency; (3) the methamphetamine pipe in Hos's pocket was in plain view; and (4) the deputy found the methamphetamine in Hos's pocket during a lawful search incident to her arrest for possession of the pipe.
>
> . . .
>
> Hos went to trial without a jury before the court commissioner sitting pro tem as a superior court judge. The commissioner reviewed the stipulated documents, found Hos guilty of the possession of controlled substances charge, and dismissed the criminal mistreatment charge, with the State's agreement.
>
> . . .
>
> Hos first argues that the trial court erred when it found that the deputy did not violate her right to privacy under article I, section 7 of the Washington State Constitution and denied her motion to suppress the evidence obtained following the warrantless entry into her home. More specifically, she contends that (1) the "community caretaking" exception to the warrant requirement is narrower under article I, section 7 than under the Fourth Amendment to the United States Constitution; (2) to fit under the article I, section 7 "community caretaking" exception, the deputy was required to use the "least intrusive means" to check on her welfare; (3) the deputy did not use the "least intrusive means;" and (4) therefore, the trial court should have suppressed the evidence the deputy seized following his warrantless entry.

ISSUES AND RULINGS: (1) Where the officer was at the residence with a DSHS CPS worker and where both the officer the CPS worker believed, based on the unresponsiveness of the apparently unconscious Ms. Hos to their knocking and shouting, was entry of the residence to check on Ms. Hos lawful as a “community caretaking function” under the Washington constitution’s article 1, section 7, which requires that such entry be both objectively and subjectively supported, as well as not pretextual? (ANSWER: Yes);

(2) If there existed a less intrusive means for the officer to determine if entry was necessary to check on the health of Ms. Hos, would that make the entry unlawful? (ANSWER: No, neither the State nor the federal constitution requires that the officer use the least intrusive means conceivable in this context)

Result: Affirmance of Jefferson County Superior Court ruling denying suppression of evidence, but reversal of bench trial conviction of Rhonda Dawnel Hos for unlawful possession of methamphetamine; the reversal of the conviction is on grounds (not addressed in this LED entry) that the defendant’s waiver of her right to a jury trial was not validly obtained by the Superior Court.

ANALYSIS: (Excerpted from Court of Appeals opinion)

1) Community caretaking function test

> The community caretaking exception, which is detached from criminal investigation, applies only when
>
> > "(1) the officer subjectively believed that someone likely needed assistance for health and safety reasons; (2) a reasonable person

in the same situation would similarly believe that there was a need for assistance; and (3) there was a reasonable basis to associate the need for assistance with the place searched." State v. Kinzy, 141 Wn.2d 373 (2000) **Sept 00 LED:07**.

Although the Washington Supreme Court has not explicitly held that community caretaking is a valid exception to the warrant requirement under article I, section 7, we have upheld the admission of evidence obtained during a warrantless search based on the community caretaking exception where the appellant argued that the search violated article I, section 7. State v. Johnson, 104 Wn. App. 409 (Div. II, 2001) **April 01 LED:09**.

And in the context of a warrantless entry into a residence, we recently held that, under article I, section 7, "[t]he first factor requires officers to subjectively believe that they need to enter the residence to provide medical assistance." State v. Williams, 148 Wn. App. 585 (Div. II, 2009) **April 09 LED:05**. In reviewing the reasonableness of such an entry, however, courts should balance the individual's privacy interests against the public's interest in having the police perform their community caretaking function. State v. Acrey, 148 Wn.2d 738 (2003) **May 03 LED:04**.

Here, the deputy's entry into Hos's residence falls within the community caretaking function, which we adopt as an exception under article I, section 7, and apply here. First, the deputy had a subjective belief that Hos was in need of medical assistance and that it would be necessary to enter the house to provide that assistance. When he looked into her house, after receiving no response to his repeated knocks and pounding on her front door, he could not tell whether she was breathing, and she appeared to be either unconscious or dead.

Second, the trial court found that the deputy's concern for Hos's health was "legitimate," especially in light of Edwards' similar observations and similar concerns about Hos's apparent lack of breathing. Thus, although the trial court did not expressly utter the word "reasonable," the findings it did articulate support an implicit finding that a reasonable person would have had similar concerns about Hos's apparent need for immediate medical attention.

Third, because the deputy and Edwards observed Hos, apparently not breathing, inside her house, there was a reasonable basis for associating Hos's home with her need for assistance. Furthermore, the deputy's entry was not a pretext to gather evidence. Rather, it was an attempt to ascertain whether Hos needed critical medical attention immediately.

2) Least intrusive means not required

Hos further contends that the trial court should also have suppressed the evidence because the deputy did not use the "least intrusive means" of checking on her welfare, such as shouting through broken window rather than through the open door. *[Court's footnote: The record does not establish that either [the deputy or Edwards] considered shouting through the broken window at the front of the house, shouting or making large motions at the window near the door, tapping on the window near the door, telephoning into the house, or taking any other actions to get [Hos's] attention.]* Hos cites several cases that she contends "suggest" that police officers acting in a community caretaking function must use the "least intrusive means." But none of these cases interpret the community caretaking exception to the warrant requirement. Furthermore, the Washington

cases that do interpret the community caretaking exception do not require the officer to use the least intrusive means, contrary to Hos's assertion. See, e.g., Johnson **April 01 LED:09**.

[Some citations omitted]

E-911 CALL, PLUS OFFICER'S OBSERVATION OF THE LIKELY AFTERMATH OF A FIGHT, ADD UP TO PROBABLE CAUSE TO ARREST FOR DOMESTIC VIOLENCE ASSAULT

State v. Trujillo, ___ Wn. App. ___, ___ P.3d ___, 2009 WL 4677130 (Div. III, 2009)

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

> [Officer A] and two [sheriff's] deputies responded to a 911 call of a domestic disturbance around 2:00 a.m. on November 14, 2007. The caller reported that a man was beating a woman in front of a Moses Lake house. The caller updated the dispatcher with a report that the man had taken the woman inside the house and closed the door, while the police were en route. [Officer A] arrived at the house. He saw stuff scattered around the front yard, including lipstick, mascara, a pack of cigarettes, and a lighter. [Officer A] repeatedly knocked on the front door and called out for someone to respond. Jose Trujillo eventually opened the door.
>
> [Officer A] asked what was going on in the house. Mr. Trujillo turned away and started back into the house. [Officer A] grabbed Mr. Trujillo by his arm. Mr. Trujillo tensed up. [Officer A] placed Mr. Trujillo in handcuffs. Mr. Trujillo gave [Officer A] permission to search him. [Officer A] frisked him for weapons. [Officer A] felt objects on Mr. Trujillo, including what he assumed were packages of powdered cocaine, but he found no weapons. [Officer B] located a woman in the house, Sarah Steffler. Ms. Steffler appeared disheveled and upset. Her eyes were red and puffy, and her mascara was streaked. She had been crying. And she had leaves and grass in her hair. Both Mr. Trujillo and Ms. Steffler were intoxicated; Ms. Steffler was highly intoxicated.
>
> Mr. Trujillo shared his version of the events with the officers. Ms. Steffler refused to talk to the police. [Officer A] noticed that the nail on her left pinky finger was torn down to the flesh and the finger was bleeding.
>
> [Officer A] then arrested Mr. Trujillo for fourth degree assault – domestic violence. Mr. Trujillo informed [Officer A] that he had about a half ounce of cocaine in his pocket. [Officer A] searched Mr. Trujillo and gathered the baggies of cocaine and other items from Mr. Trujillo's pockets.
>
> The State charged Mr. Trujillo with possession of a controlled substance other than marijuana (cocaine) and assault in the fourth degree – domestic violence. The State later added a count of possession with intent to manufacture or deliver cocaine.
>
> . . .
>
> The jury found Mr. Trujillo guilty of possession of a controlled substance other than marijuana (cocaine) and not guilty of possession with intent to manufacture or deliver cocaine. **[LED EDITORIAL NOTE: The trial court dismissed the assault charge for insufficient evidence.]**

ISSUE AND RULING: Did the E-911 call, plus the officer's observation of evidence consistent with the aftermath of a fight, add up to probable cause to arrest the likely assailant for domestic violence assault? (ANSWER: Yes)

Result: Affirmance of Grant County Superior Court conviction of Jose Daniel Trujillo for possession of cocaine.

ANALYSIS: (Excerpted from Court of Appeals opinion)

> The officer had probable cause to arrest when he was aware of facts and circumstances, based on reasonably trustworthy information, sufficient to give him reason to believe a crime had been or was being committed. He did not need evidence sufficient to prove each element of the crime beyond a reasonable doubt. Facts and circumstances need only point to the probability of criminal activity.
>
> [Officer A] responded to a report of domestic violence by a man against a woman at a particular house. He went to that house. [Officer A] saw evidence of a struggle in the front yard. The man who answered the door refused to respond to questions about what was going on in the house that evening. [Officer B] located Ms. Steffler. She was the only other person in the house. She looked distraught and disheveled, with puffy eyes and leaves and grass in her hair. She had been crying. Her finger was bleeding from a recently torn nail. [Officer C] then interviewed the 911 caller. [Officer A] concluded he had probable cause to arrest based on all of this. We agree; he did. Indeed, he was required to arrest based on this. RCW 10.31.100(2)(c) and RCW 10.99.030(6)(a) require arrest if he believed Mr. Trujillo assaulted a household member within the preceding four hours.

[Case citations omitted]

BOOKING EXCEPTION TO MIRANDA WARNINGS REQUIREMENT HELD NOT APPLICABLE IN CASE WHERE BOOKING WAS FOR POSSESSION OF ILLEGAL DRUGS, AND JAIL EMPLOYEE'S QUESTION ASKED ABOUT RECENT DRUG USAGE

State v. Denney, 152 Wn. App. 665 (Div. II, 2009)

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

> On June 18, 2007, Olympic Drug store manager, David Look, contacted Denney after she triggered a store exit alarm. After several attempts to determine what was setting off the alarm, Look took Denney to the back room where he discovered an unpurchased package of nasal spray in Denney's bag. Although the box was empty, Look located the spray bottle nearby. As Look continued to search Denney's bag, he found several pills. An on-site pharmacist identified the pills as morphine tablets and Look contacted the Longview Police. [A Longview police officer] arrived and read Denney her Miranda warnings. Denney stated that she understood her rights and chose to remain silent. [The officer] transported her to the Longview Police Department. At the Cowlitz County jail, [the officer] turned Denney over to jail personnel but remained on scene pending completion of the booking process and medical questionnaire, according to county policy.
>
> Jail personnel administered a standard questionnaire to determine if Denney could be safely booked into the jail or if they should transfer her to a medical facility. The questionnaire included questions regarding drug use. Denney

admitted that she had taken one morphine tablet that day. Later, [a jail employee] contacted Denney to complete a bail survey to make bail recommendations to the court. During the survey, [the jail employee] asked if Denney "ha[d] any trouble with drug dependency or [had used] drugs within the last 72 hours." Denney answered "[m]orphine."

The State charged Denney with one count of third degree theft and one count of unlawful possession of a controlled substance (morphine). Prior to trial, Denney requested a CrR 3.5 hearing to determine the admissibility of the statements she made to jail personnel. The State called [the police officer] and [the jail employee] to testify to the circumstances of Denney's arrest and the context in which jail personnel questioned Denney about her drug use.

[The police officer] testified that jail personnel administer the medical questionnaire to every inmate and that he is required to "stand by" until the questionnaire is completed. [The police officer] testified that he does not participate in the questionnaire process in any way. He explained that after Denney asked to speak with an attorney, he "respected" her request and did not attempt to speak with her. [The officer] overheard Denney say she had used morphine that day and made note of her statement in his investigative report.

[The jail employee] testified that she interviewed Denney in her cell. She explained that she uses an inmate's admission of drug use to determine whether they pose a risk of flight or if placement in a medical facility rather than a correctional facility is appropriate.

The State acknowledged that Denney was in custody, but argued that the questions were standard booking procedures not an interrogation prohibited by Miranda. The State relied on State v. Walton, 64 Wn. App. 410 (1992) **Jan 93 LED:15**, which held that standard procedural questions asked during inmate booking were not interrogations under Miranda. The State noted that the jail used both statements to determine an appropriate placement for Denney, not to aid officers in their investigation. . . .

The trial court . . . admitted her statements. . . . In determining that jail personnel had not obtained the statements in violation of Miranda, the trial court relied on Walton, which held that statements obtained for medical reasons were not violations of Miranda. The trial court emphasized the routine nature and practical purposes of the booking and bail questionnaires.

At trial, both [the police officer and jail employee] testified that Denney admitted to using morphine within the last 72 hours. In her testimony, Denney denied telling anyone she took morphine. She explained that she found the pills in the back seat of her mother's car after driving one of her mother's clients to the grocery store. She testified that she put the pills in her purse because she intended to return them to the owner and that was the last time she "[t]hought about the pills." Additionally, she testified that at the time of her arrest a few weeks later, she had not located the owner of the pills.

. . . .

The jury found Denney guilty on both counts.

[Footnotes and record cites omitted]

ISSUE AND RULING: Where a person has been arrested for unlawful possession of a controlled substance, does the "booking exception" to the Miranda warnings requirement apply to jail personnel's administration of a medical questionnaire that includes a question as to whether the arrestee has any trouble with drug dependency or has used drugs within the past 72 hours? (ANSWER: No, Miranda warnings are required in this circumstance)

Result: Reversal of Cowlitz County Superior Court conviction of Virginia Lynn Denney for unlawful possession of a controlled substance in violation of RCW 69.50.4013; remanded for possible retrial (NOTE: Denney's appeal did not challenge her conviction for third degree theft in violation of RCW 9A.56.050).

Status: The Court of Appeals decision is final.

ANALYSIS: (Excerpted from Court of Appeals opinion)

> The State argues that because both the booking questionnaire and the bail survey were routine background questions necessary for identification and assisting the judge in setting bail, they fall within in the routine question exception to Miranda. The State is correct that Washington courts recognize that "routine booking procedures . . . rarely elicit an incriminating response" and, thus, may be exempt from Miranda requirements. However, the State is incorrect in presuming that the standard nature of the booking and bail questions shielded the questions from Miranda requirements. The State's arguments fail because, regardless of their routine nature, the questions in this case were reasonably likely to produce an incriminating response. Thus, the trial court erred when it admitted Denney's custodial statements and we reverse.
>
> State agents must give Miranda warnings before custodial interrogations. In this case, the State concedes that Denney was in custody when the jail service officer asked about her drug use and that the service officers were state agents. The sole question on appeal is whether the trial court's determination that the booking procedure and bail questionnaire were not interrogations was clearly erroneous. . . .
>
> Courts have recognized that routine questions asked during the booking process may not be "interrogations" under Miranda . . . The routine question exception recognizes that such questions rarely elicit an incriminating response and do not involve the "compelling pressures which . . . undermine the individual's will to resist and compel him to speak where he would not otherwise do so freely." This limited exception to Miranda allowing background, biographical questions necessary to accomplish booking procedures does not encompass all questions asked during the booking process.
>
> When determining if the routine question exception applies, the court asks if the questioning party should have known that the question was reasonably likely to elicit an incriminating response. State v. Willis, 64 Wn. App. 634 (1992) **June 93 LED:10**. This test is objective. The subjective intent of the questioning agent is relevant but not conclusive. The relationship between the question asked and the crime suspected is highly relevant.
>
> In State v. Sargent, the Washington Supreme Court held that a probation officer's questions amounted to custodial interrogation in violation of Miranda. 111 Wn.2d 641 (1988). The officer asked the defendant "[d]id you do it?" The court

commented "[t]his is not the functional equivalent of interrogation – it is interrogation."

The likelihood of incrimination need not be as obvious as the question in Sargent. In Willis, Division Three of this court determined that the routine question exception did not apply to specific questioning conducted by a probation officer. In that case, a probation officer asked Willis, who was in custody on unrelated charges, specific questions about how he supported his drug habit. In response, Willis admitted not only to "ripping people off [ ] and stealing cars" but to stealing a particular truck. The State later charged Willis with taking a motor vehicle without permission and relied on his statements to the probation officer in its case in chief. Division Three noted that the probation officer had no specific knowledge that police officers suspected Willis of committing other crimes but emphasized that the defendant's perception of an interrogation, not the questioner's intent, is determinative. **[See the LED EDITORIAL COMMENT at the end of this entry regarding phrase, "defendant's perception," that we have underlined.]**

Conversely, Washington courts will not find that standard questionnaires are interrogations under Miranda when administered for routine purposes such as identification, and are unlikely to produce an incriminating response. In Walton, Division Three of this Court held that the routine question exception applied to questions asked by jail personnel for the purposes of establishing the defendant's identity and establishing bail. In that case, a booking officer and a pretrial investigator asked the defendant for his address. The defendant later argued that his responses were inadmissible under Miranda when the State relied on the address he gave to the officers to establish constructive possession for drugs found at that address. Division Three disagreed, noting that the "routine background questions necessary for identification and to assist a judge in setting reasonable bail . . . are precisely the routine statements which are admissible, even though they ultimately prove to be incriminating."

Denney argues that we should find that the trial court's determination that her statements were admissible under the routine questioning exception was clearly erroneous because the questions were directly relevant to the charges against her and invited an incriminating response. We agree.

Jail personnel should have known the question was reasonably likely to produce an incriminating response. Denney had been arrested for morphine possession and both the booking and bail questionnaires asked her if she had used an illegal drug in the last few days. Similar to the question in Sargent, the questions in this case invited an answer that would be a direct admission of guilt.

The State places great emphasis on the legitimate purpose of the questionnaires and the good faith of the personnel administering them. While the State is correct that the questionnaires are important in ensuring inmate safety and proper pretrial release and that there is no indication that personnel sought an incriminating response, those factors are not determinative. A legitimate question, asked with good intentions, will still violate a defendant's Miranda rights if it is reasonably likely to produce an incriminating response. Additionally, the legitimate purposes of the questionnaires are advanced by the exclusion of incrimination responses. Jail personnel will only be able to assess the

> defendant's medical needs accurately if the defendants know that their responses will not later be used against them.
>
> The questions during the booking process and the bail survey were reasonably likely to produce an incriminating response because they invited Denney to comment directly on the charges against her. We hold that the trial court erred when it admitted Denney's custodial statements. We reverse Denney's conviction for possession.

[Some citations omitted; emphasis added]

LED EDITORIAL COMMENTS: (1) Jail administrators will need to determine whether it is more important for staff to determine current drug problems or recent drug usage than to adhere to Miranda requirements in this situation. This should be discussed with the respective legal advisors.

(2) Jail booking personnel may be authorized (assuming jail administrators would want such an approach) under the "initiation of contact" rules to initiate a new request for waiver of Miranda rights where the continuous custody suspect previously invoked only the right to remain silent. See the article on the CJTC internet LED page: "Initiation-of-contact rules under the Fifth Amendment" for a discussion of the difference between the restrictions on officers initiating contact with an invoking continuous custody suspect, depending upon whether the person invoked (1) only the right to silence (creating only a qualified bar to re-contact) or (2) the right to an attorney (creating a strict bar to re-contact).

(3) Is the test for what constitutes "interrogation" objective or subjective or some of both? We think that the best answers to this question is "some of both." The "defendant's perception" cannot just be made up by the defendant to fit the defendant's interest at the time of a suppression hearing. The defendant's claim of a certain "perception" of the circumstances of the interrogation must have some objective basis in reality, though his or her provable susceptibilities will be taken into account. The mixed subjective-objective standard for what constitutes "interrogation" is a confused and complicated area of law that we will not take up in the LED for, among other reasons, (1) LED space limits, and (2) the LED Editors' time-and-brain-capacity limits. Readers with an academic bent might want to read the following article by Professor Kit Kinports: CRIMINAL PROCEDURE IN PERSPECTIVE, 98 Journal of Law and Criminology 71 (2007) (discussing inconsistencies in the case law regarding how the hypothetical "reasonable person" fits into federal constitutional standards, particularly in cases interpreting the Fourth and Fifth Amendments)].

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BRIEF NOTES FROM THE WASHINGTON STATE COURT OF APPEALS

(1) DEFENDANT PERMITTED TO RAISE GANT ARGUMENT ON APPEAL DESPITE HAVING FAILED TO MOVE FOR SUPPRESSION AT THE TIME OF TRIAL; STATE'S "GOOD FAITH" EXCEPTION-TO-EXCLUSION ARGUMENT REJECTED BY DIVISION TWO OF THE WASHINGTON COURT OF APPEALS – In State v. Harris, ___ Wn. App. ___, ___ P.3d ___, 2010 WL 45755 (Div. II, 2010), Division Two of the Court of Appeals rules that a defendant who did not bring a suppression motion while his case was at superior court, may raise a claim under Arizona v. Gant, 129 S.Ct. 1210 (2009) **June 09 LED:13** for the first time in the Court of Appeals. The Court of Appeals remands the case to superior court for a hearing on

whether the evidence seized in a vehicle search incident to arrest must be suppressed under the retroactively applicable U.S. Supreme Court decision in Gant.

The Court of Appeals also rejects an argument by the State that a "good faith" exception to exclusion of evidence should be applied to officers' violation of constitutional search and seizure rules where officers were following the uniformly accepted interpretation of the law at the time of the search incident to arrest. The Harris Court notes that the Ninth Circuit of the U.S. Court of Appeals recently rejected a similar "good faith" argument in a Gant case, U.S. v. Gonzalez, 578 F.3d 1130 (9th Cir. 2009) **Nov 09 LED:10**.

Result: Reversal of Pierce County Superior Court conviction of Stuart J. Harris, Jr. for first degree unlawful possession of a firearm; remand for suppression hearing.

(2) STATE'S "GOOD FAITH" EXCEPTION-TO-EXCLUSION ARGUMENT IS ACCEPTED BY DIVISION ONE OF THE WASHINGTON COURT OF APPEALS; DIVISION ONE DISAGREES WITH DIVISION TWO AND WITH THE NINTH CIRCUIT OF THE UNITED STATES COURT OF APPEALS – In State v. Riley, ___ Wn. App. ___, ___ P.3d ___, 2010 WL 427118 (Div. I, 2010), Division One of the Court of Appeals, by a 2-1 vote, disagrees with Division Two's decision in Harris (see LED entry immediately above) and with the decision of the Ninth Circuit of U.S. Court of Appeals in U.S. v. Gonzalez, 578 F.3d 1130 (9th Cir. 2009) **Nov 09 LED:10**.

The Riley majority opinion recognizes that Gant is retroactively applicable and makes unlawful the pre-Gant vehicle-search-incident here, following an arrest on a warrant. But the majority opinion determines that both the Fourth Amendment of the federal constitution and article 1, section 7 of the Washington constitution contain a "good faith" exception to exclusion of evidence in circumstances where officers were following the uniformly accepted interpretation of the law at the time of their search incident to arrest.

Judge Dwyer dissents in Riley, arguing that Division Two and the Ninth Circuit got it right in Harris and Gonzalez, respectively.

Result: Affirmance of King County Superior Court conviction of Donald Eugene Riley for methamphetamine possession.

(3) DEFENDANT WHO PLEADED GUILTY IS NOT ALLOWED TO MAKE GANT ARGUMENT BECAUSE HIS GUILTY PLEA INHERENTLY WAIVED HIS RIGHT TO DO SO – In State v. Brandenburg, ___ Wn. App. ___, ___ P.3d ____, ___2009 WL 5099678 (Div. II, 2009), the Court of Appeals rules that a defendant who pleaded guilty cannot challenge his conviction on grounds that evidence should have been suppressed based on the U.S. Supreme Court decision in Arizona v. Gant, 129 S.Ct. 1210 (2009) **June 09 LED:13**, even though the decision was announced after he pleaded guilty. An inherent part of the guilty plea, the Brandenburg Court holds, is waiver of search and seizure issues.

Result: Affirmance of Benton County Superior Court conviction of Raymond Carl Brandenburg for possession of methamphetamine.

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INTERNET ACCESS TO COURT RULES & DECISIONS, TO RCWS, AND TO 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.supremecourtus.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 "Decisions" and then "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 current through 2007, is at [http://www.leg.wa.gov/legislature]. Information about bills filed since 1991 in the Washington Legislature is at the same address. Click on "Washington State Legislature," "bill info," "house bill information/senate bill information," and use bill numbers to access information. Access to the "Washington State Register" for the most recent proposed WAC amendments is at this address too. In addition, a wide range of state government information can be accessed at [http://access.wa.gov]. The internet address for the Criminal Justice Training Commission's LED is [https://fortress.wa.gov/cjtc/www/led/ledpage.html], while the address for the Attorney General's Office home page is [http://www.atg.wa.gov].

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The Law Enforcement Digest is co-edited by Senior Counsel John Wasberg and Assistant Attorney General Shannon Inglis, both of the Washington Attorney General's Office. Questions and comments regarding the content of the LED should be directed to Mr. Wasberg at (206) 464-6039; Fax (206) 587-4290; E Mail [johnw1@atg.wa.gov]. LED editorial commentary and analysis of statutes and court decisions express the thinking of the writers and do not necessarily reflect the views of the Office of the Attorney General or the CJTC. The LED is published as a research source only. The LED does not purport to furnish legal advice. LEDs from January 1992 forward are available via a link on the Criminal Justice Training Commission Home Page [https://fortress.wa.gov/cjtc/www/led/ledpage.html]

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