



Law Enforcement Digest



Covering cases published in April 2025

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Cases in the Law Enforcement Digest are briefly summarized, with emphasis placed on how the rulings may affect Washington law enforcement officers or influence future investigations and charges. Each cited case includes a hyperlinked title for those who wish to read the court's full opinion. Links have also been provided to key Washington State prosecutor and law enforcement case law reviews and references.

The materials contained in the LED Online Training are for training purposes. All officers should continue to consult with their department legal advisor for guidance and policy as it relates to their particular agency.

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Each month's Law Enforcement Digest covers court rulings issued by some or all of the following courts:

- **Washington Courts of Appeals.** The Washington Court of Appeals is the intermediate level appellate court for the state of Washington. The court is divided into three divisions. Division I is based in Seattle, Division II is based in Tacoma, and Division III is based in Spokane.
- **Washington State Supreme Court.** The Washington Supreme Court is the highest court in the judiciary of the U.S. state of Washington. The court is composed of a chief justice and eight justices. Members of the court are elected to six-year terms.
- **Federal Ninth Circuit Court of Appeals.** Headquartered in San Francisco, California, the United States Court of Appeals for the Ninth Circuit (in case citations, 9th Cir.) is a federal court of appeals that has appellate jurisdiction over the district courts in the western states, including Washington, Alaska, Arizona, California, Hawaii, Idaho, Montana, Nevada, and Oregon.
- **United States Supreme Court:** The Supreme Court of the United States is the highest court in the federal judiciary of the United States of America.

Washington Legal Updates

The following training publications are authored by Washington State legal experts and available for additional caselaw review:

- [Legal Update for WA Law Enforcement](#) authored by retired Assistant Attorney General, John Wasberg
- [Caselaw Update](#) by WA Association of Prosecuting Attorneys

Case Review

The [Washington State Judicial Opinions](#) website provides free public access to the precedential, published appellate decisions from the Washington State Supreme Court and Court of Appeals.

Case Menu

Summary of this Month's Cases

This month's cases include five from our Washington courts and one from the Ninth Circuit. The cases are notable for the judges and justices common sense application of reasonable legal standards. The reasoning from the *Ireland* case especially stands out as an example of a court keeping the grim reality of death of innocent victims central to its review of a jury decision. But lest all seem rosy, the dissent in the first case (the *Zghair* case) is a sobering reminder that these same judicial officers in future cases can change what today seems like reasonable and responsible caselaw.

Thank you to all officers taking this training for your patience and dedication in making the effort to stay up to date.

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General Disclaimer

The case digests presented here are owned by the Washington State Criminal Justice Training Commission. They are created from published slip opinions¹ and are general and may not apply to specific issues in specific cases or investigations. They are published as a research and training resource for law enforcement officers, investigators, detectives, supervisors, agencies, and other interested law enforcement-related parties.

The digests do not constitute legal advice, nor does their publication create or imply an attorney client relationship with any law enforcement agency or officer or party. All law enforcement personnel, parties, and agencies must review the actual published case opinions and consult their agencies' legal advisors, union counsel, and local prosecutors for specific guidance on the application of the opinions to specific issues in specific cases or investigations.


Questions?

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Note: You may see *Id* at the end of some paragraphs in this LED. It is used to refer to the immediately preceding citation.

¹ Slip opinions are frequently revised after initial publication and after the creation of these case digests. In any specific case or investigation, it is necessary to review the final version of the opinion published by the Washington State Judicial Opinions website.



State v. Zghair

No. 102787-7

Washington Supreme Court

April 17, 2025

State v. Zghair, No. 102787-7, Washington Supreme Court (April 17, 2025)

Factual Background

Homicide cases in which there are no eyewitnesses are a challenge for both law enforcement and prosecutors. This is especially true where a single suspect is identified in a killing that could have been committed by more than one perpetrator. This case involves the application and interpretation of the **accomplice liability statute and sufficiency of the evidence standards** that can be applied in such cases.

The incident took place in March 2019. The victim's body was found in a field in Auburn by a passerby. The victim had been shot with a shotgun loaded with bird shot. The scene processing evidence included tire tracks, footprints leading away, a blood trail, and a broken necklace. The opinion does not include whether the victim's wallet, and money that was withdrawn from an ATM, were ever recovered.

Cause of death was the shotgun wound. The medical examiner concluded that the victim had been shot from close range, meaning within three feet and that he had fled on foot after the shooting. Forensic evidence confirmed that the victim had been shot near a vehicle and then ran. The suspect vehicle was tracked down and processed more than two weeks after the shooting. Birdshot and blood were found in the vehicle consistent with the victim's fatal injury. The vehicle was registered to the defendant and in his police interview he admitted that it was his.

The homicide detectives pieced together some details of the events leading to the shooting. They did not have any eyewitnesses but they were able to construct a timeline from surveillance video, geolocation evidence, and cell phone evidence. Both the victim's and the defendant's cell phones were recovered and forensically examined. They showed that the two men were together from approximately 3:25 am until the time of the shooting which occurred shortly after 4 am.

The timeline included that the victim had been at a restaurant earlier in the evening until just before 11 pm. After leaving the restaurant, the victim withdrew money at a bank ATM at approximately 1:25 am. On surveillance video from the bank, he could be seen getting in a white car and leaving. He also made several phone calls for rides. The video from the bank appeared to be the last time he was seen alive.

The defendant was connected to the shooting by his cell phone and car starting at approximately 3:25 am. His car was captured on video at a gas station. He was able to be identified from the video and later admitted the car was his and that he had picked up an individual matching the description of the victim. A second individual was with the defendant. This suspect wore a red jacket but was never identified. The detectives did not establish a connection between the individual in the red jacket and the victim or the shooting.

The victim was not captured in the video from the gas station. But his cell phone showed that he was there at the same time as the defendant and the individual in the red jacket. Also, the cell phone evidence showed that both the victim's and the defendant's cell phones were in the area where the victim's body was found at the same time. The evidence also established that no other phones other than those two were in the area.

Traffic cam video captured the defendant's car traveling in the direction of the shooting scene. This was at 4:08 am. Two individuals could be seen in the car but could not be identified. The video images were consistent with an individual in the car wearing red.

After tracking down the defendant via his car, the detectives also pieced together the defendant's actions after the murder. The appearance of his car had been changed in that a distinctive sticker had been removed. Also, the license plate was moved from a window and installed on the car. The defendant also pawned his cell phone. On April 12, approximately two weeks after the murder, the police executed a search warrant for the defendant's residence. He was found not to be residing at the residence but the day after the search, he attempted to cross the border into Canada. During the attempted border crossing, the defendant attempted to flee on foot. He was apprehended and Auburn detectives were notified that he was in custody.

The detectives contacted the defendant in Whatcom County and interviewed him. His police statements included his admission that the car was his, that he had picked up an Hispanic individual and given him a ride "out on the hill."

He also admitted having driven to the ATM where the victim made the withdrawal. He also told the detectives that he did not know how to use a gun even though the detectives never mentioned that a gun or shooting was involved.

The defendant was charged with felony second degree murder predicated on second degree assault. This meant that the burden was on the prosecution to prove that he intentionally shot the victim, or was an accomplice to the shooting, but not that he intended to kill. He went to trial.

At trial the jury instructions defined the second-degree assault charge and further directed that the defendant could be convicted either as the principal (meaning the shooter) or as an accomplice (meaning that he aided the shooter). The jury convicted as charged and found a sentence enhancement for the defendant having committed the offense with a firearm. The defendant appealed his conviction and challenged the sufficiency of the evidence for the felony murder charge.

Analysis of the Court

The court began its opinion with references to the sufficiency of the evidence standards that apply to criminal cases. The standards are derived from the federal and state constitutional due process clauses. It is basic constitutional law that the “Due Process Clause protects the accused against conviction except upon proof beyond a reasonable doubt of every fact necessary to constitute the crime with which he is charged.” *Zghair Slip Opinion*, p. 9

The basic due process standard is not the only standard that applies to sufficiency cases. The court described several additional standards that apply. The first was, “To determine if sufficient evidence supports a conviction, we consider ‘whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.’ ” *Zghair Slip Opinion*, p. 10. Another was that, “As the reviewing court, we must not ‘reweigh the evidence and substitute our judgment for that of the jury.’ ” *Id.*

The court’s description of the standards that it would apply to the case was not new. These are well-established standards that have been developed and refined for years. The importance of the case was not the substance of the standards but the court’s application of them to a circumstantial evidence case.

The application was not unanimous. The court's majority included seven justices, and there were two dissenters. In a circumstantial evidence case, a jury or judge may infer facts from circumstantial evidence "if reason and experience support the inference." *Zghair Slip Opinion*, p. 20. Both the majority and the dissent summarized the inferences that the justices themselves felt could be properly drawn from proven facts. It is helpful in this case to review both summaries.

The majority opinion summarized the inferences as follows:

Taken in the light most favorable to the State, the evidence shows that (1) a combination of cell site location data, traffic camera footage, and video surveillance footage placed Zghair and Ruiz-Perez together throughout the night of Ruiz-Perez's fatal shooting, (2) Zghair drove Ruiz-Perez around in his car on the night of the shooting, (3) Zghair drove Ruiz-Perez to an unattended field where Ruiz-Perez was fatally shot and left to die, (4) Zghair drove away from the scene soon after Ruiz-Perez was shot, (5) Ruiz-Perez was killed with a shotgun, (6) the medical examiner report shows that Ruiz-Perez was shot while standing next to or while inside Zghair's car, (7) forensic evidence shows that Ruiz-Perez's blood and traces of bird shot from a shotgun were found in the back seat cushion of Zghair's car, (8) the pellets found in Ruiz-Perez's wound indicate he was shot with a shotgun, (9) testimony from nearby witnesses indicated there were the sounds of gunshots and a verbal argument coming from the unattended field, (10) Zghair admitted to owning the car used to transport Ruiz-Perez around on the night of his death and having knowledge of his fatal shooting, and (11) before told by police, Zghair admitted to knowing a gun was used in the commission of a murder and knowledge that the victim's perceived ethnicity was someone of Mexican origin. *Zghair Slip Opinion*, p. 15

By contrast, after reviewing the same record and evidence, the two dissenting justices summarized their view of the permissible inferences much differently:

Taking the State's evidence as true and viewing reasonable inferences in its favor, a rational trier of fact could find that Ruiz-Perez was fatally shot near Zghair's car and that Zghair (1) drove Ruiz-Perez around on the night of the shooting, (2) was present when Ruiz-Perez was shot, (3) drove the car away from the scene without Ruiz-Perez, and (4) later admitted he knew someone had been shot. *Zghair Slip Opinion, Dissent*, p. 5

The difference in how the nine justices analyzed the same evidence is one aspect of a circumstantial case that must be kept in mind. The sufficiency standards strongly favor the prosecution. But even so different judges (and different jurors) are always going to view circumstantial evidence differently in terms of what it proves. The key to such cases is the degree to which one inference seems more powerful or more reasonable than another.

In addition to the sufficiency standards the court also reviewed and applied substantive law standards for accomplice liability. The court concluded that the evidence was sufficient to prove either that the defendant was the shooter (the principal) or an accomplice (assisted in the shooting). The court stated that “To be an accomplice, an individual must have acted with knowledge that they were promoting or facilitating the crime for which they were eventually charged, not merely the knowledge that the principal intended to commit a crime.” *Zghair Slip Opinion*, p. 12

As to the knowledge requirement, the court stated, “Nothing forbids a jury from logically inferring *mens rea* from proven facts, so long as it is satisfied the State has proved *mens rea* beyond a reasonable doubt... An actor’s mental state may be inferred from circumstantial evidence, including that a defendant intends the natural and probable consequences of his acts... Therefore, the jury must find that Zghair had actual knowledge of ‘the crime’ to be committed, and the jury may infer actual knowledge based on circumstantial evidence that a reasonable person in Zghair’s situation would have believed he or she was promoting or facilitating the crime eventually charged.” *Zghair Slip Opinion*, p.13

The court applied the accomplice standards to the facts it considered had been proved. The court acknowledged that inferences about the defendant’s knowledge could be drawn differently and it used as an example whether the defendant was alone or with the individual in the red jacket at the scene of the shooting. “The jury was free to infer either that Zghair aided this individual in carrying out the shooting as an accomplice or, in the alternative, that Zghair was the only other person present at the scene and therefore liable as a principal. It is the province of the finder of fact, not the appellate court, to determine what conclusions reasonably flow from the particular evidence in a case.” *Zghair Slip Opinion*, p. 16

The court also addressed an issue from the lower court of appeals decision. That was the lack of evidence that the defendant was aware of a plan to do violence to the victim.

The court rejected the notion that a plan was required, saying, “Knowledge of a plan to commit the charged crime is not a required element to establish accomplice liability.” *Zghair Slip Opinion*, p. 18. The court therefore differentiated between general knowledge of the crime and specific knowledge of a plan to commit the crime.

It is important to bear in mind that two justices would have overturned the conviction. They were unwilling to credit the reasonableness of inferences that the majority considered valid and reasonable. In particular the defense considered the evidence lacking both as to whether the defendant was the shooter or an accomplice to the shooter.

As to the defendant having been the shooter, the court stated, “While the evidence of a shooting is strong, the evidence it was done intentionally is weak and speculative.” *Zghair Slip Opinion, Dissent*, p. 7. Also, as to the evidence that the defendant fired the shots, the dissent stated, “I would conclude the evidence was insufficient to convict Zghair as a principal because the evidence does not support reasonable inferences that he was the shooter or that he intended to assault Ruiz-Perez.” *Zghair Slip Opinion, Dissent*, p. 9

And as to the defendant having been an accomplice, the dissent stated, “I would conclude the evidence was insufficient to convict Zghair as an accomplice. While the evidence supports inferences that Zghair knew the gun was in the car, was present during the shooting, drove the car away from the shooting, and knew afterward that a crime had been committed, it does not support reasonable inferences that he knew the individual in red would intentionally assault Ruiz-Perez with a deadly weapon or that he knowingly assisted in the commission of that specific crime.” *Zghair Slip Opinion, Dissent*, p. 22

In the eyes of seven justices the evidence was sufficient. The court upheld the defendant’s conviction and sentence and reversed the court of appeals decision to the contrary.

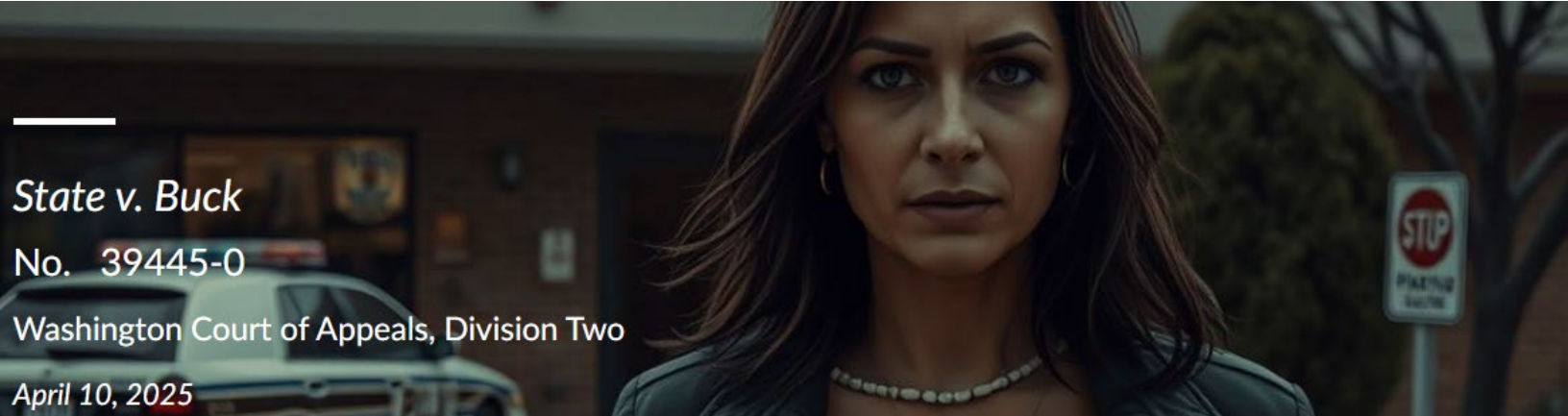
Training Takeaway

In a case without eyewitnesses law enforcement and the prosecution must rely on circumstantial evidence. Such evidence can be extremely powerful. Video evidence is one example that in modern investigations can be thought of as the gold standard. But images captured on video are rarely definitive. They range from the capture of the actual crime in progress, to the capture of events before the crime that merely shed light on how or why it was committed. Video evidence can be a good example of circumstantial evidence.

For investigators and charging prosecutors, circumstantial evidence plays a significant part in the decision of what charges to file. There was evidence in this case of an unknown third party in red at the gas station and in the car when it was captured on the traffic cam. The evidence might have been sufficient to prove in the eyes of some judges or jurors that an unknown third party was involved. That uncertainty did not derail the case because of how it was charged. The defendant could be convicted either as a principal (the shooter) or as an accomplice (an aider). That charging decision effectively addressed the possibility and problem of an unknown, uncharged perpetrator.

The same can be said of the lack of a murder weapon. The presence of bird shot in the victim's body and in the defendant's car, was supportive but not conclusive proof that the victim was shot with a shot gun near the defendant's car. Fortunately, the jury and the Supreme Court concluded that it was a reasonable inference that the victim had been shot near the defendant's car after having been driven there by the defendant. The charging decisions meant that the Supreme Court (and likely the jury) could sidestep deciding who pulled the trigger. The court concluded that the evidence was sufficient that the defendant was the shooter or aided the shooter with knowledge of the shooting.

EXTERNAL LINK: [View the Court Document](#)



State v. Buck

No. 39445-0

Washington Court of Appeals, Division Two

April 10, 2025

State v. Buck, No. 39445-0, Washington Court of Appeals, Division Two (April 10, 2025)

Factual Background

Interfering with the reporting of domestic violence (DV) is a common charge arising from DV investigations. This case addressed a particular nuance of the charge, namely whether it is an **alternative means crime**. That issue arises when a crime can be committed by different types of criminal conduct. The court resolved the case in the state's favor and upheld the conviction.

The incident began as an argument over custody of a couple's two children. The defendant and the victim had been in a relationship that resulted in two children. They lived together. Their relationship harmony deteriorated as the defendant began mistreating the victim. They separated but maintained contact.

After the separation, the defendant sought to have the victim sign a custody document. She refused and said that custody would need to be decided by a court. He became irate and violent. He assaulted the victim by holding her down, dragging her across the floor, and threatening to kill her. During the assault, she told the defendant that she was going to call 911. The opinion does not say what type of aid she would have asked for. But in any event, the defendant took her cell phone thereby preventing her calling 911.

After some time passed the victim stated her intention to drive to the sheriff's office. The defendant allowed her to do so. Later the defendant was charged with fourth degree assault, interfering with the reporting of domestic violence, and failure to register as a sex offender. He was convicted at trial and appealed the interfering conviction.

Analysis of the Court

This case was a partially reported decision. The analysis of the interfering charge was published and a number of other issues were left unpublished. Interested officers may review the unpublished issues in the slip opinion.

The issue in the interfering part of the appeal was whether the interfering charge was an alternative means crime. Alternative means crimes are a class of crimes where the crime may be committed by different types of criminal conduct. Alternative means cases are based on the constitutional requirement of a unanimous jury verdict; the jury must be unanimous as to the conduct that caused the defendant to be guilty of the crime.

Where a crime can be committed by different types of conduct, the jury must be unanimous as to the conduct that led to the guilty verdict for each alternative means. An issue arises if there is a weakness in the evidence that applies to one of the alternative means. “If the court instructs the jury on one or more alternative means that are not supported by sufficient evidence, the jury must provide a particularized expression of unanimity as to the supported means.” *Buck Slip Opinion*, p. 4. If the jury verdicts do not differentiate between the alternatives, and one is weak or lacking, there can be a possible non-unanimous verdict.

The *Buck* court reviewed the statute as to the conduct. It found that although the statute listed alternatives for the type of aid a 911 call might summon, it made criminal only one type of conduct, namely preventing the call itself. “The key inquiry is whether the statute describes ‘distinct acts that amount to the same crime.’ ” *Buck Slip Opinion*, p.5

The court concluded that the interfering statute did not define alternative means crimes. Because the conduct of the defendant was the same, the prevention of reporting to alternative agencies was not determinative.

The court discussed a Washington Supreme Court opinion that supported its analysis. See [State v. Sandholm](#), 184 Wn. 2d 726 (2015). That case held that the DUI statute included two, but not three alternative means of committing the offense of driving while under the influence of an intoxicant. The *Buck* court deemed its analysis consistent with *Sandholm*. The court also disagreed with a contrary decision from Division One concerning the interfering statute. See [State v. Nonog](#), 145 Wn. App. 802 (2008)

Training Takeaway

The alternative means analysis is mostly a charging and jury instruction issue. As such, it is the responsibility of prosecutors. But it is important for law enforcement to bear in mind that most crimes include statutory alternatives. If only one alternative is supported by the evidence, prudence might dictate that only that alternative be charged.

Law enforcement should also be mindful that where two divisions of the court of appeals differ on an issue, the issue is inherently unsettled. Such divisions are commonly resolved by the Supreme Court. But until a Supreme Court case puts the issue to rest, there is inherent and unavoidable uncertainty in the law. Unfortunately, this is nothing new.

EXTERNAL LINK: [View the Court Document](#)



State v. Ireland

No. 58212-1

Washington Court of Appeals, Division Two

April 29, 2025

State v. Ireland, No. 58212-1, Washington Court of Appeals, Division Two (April 29, 2025)

Factual Background

Aggravating circumstances are an important part of providing complete justice in criminal cases. Under the **Sentencing Reform Act** certain aggravating factors enable a sentencing court to impose a sentence above the standard sentencing range. This case arises from a vehicular homicide and assault incident in which the trial court sentenced the defendant above the standard range.

The incident took place in April 2021 on I-5. The weather conditions consisted of intermittent rain that rendered visibility poor to fair. One of the victims was involved in a one car accident that happened just before the fatal collision. His vehicle slid off the roadway into a ditch.

A trooper responded and summoned a tow truck. The tow truck driver responded before the fatal collision. He activated his emergency lights and extracted the vehicle from the ditch. The tow truck driver was positioned between his rig and a second victim vehicle that had pulled off the road at the time of the fatal collision. He was crushed between his vehicle and the second victim vehicle.

The second victim vehicle pulled off the freeway behind the tow truck for unknown reasons. The vehicle was occupied by two victims. They were in their vehicle and had their seat belts on just before the fatal collision.

The fatal collision was caused by the defendant crossing several lanes of traffic and running into the back of the second vehicle. The impact pushed the second vehicle forward and the tow truck driver was crushed between his rig and the second vehicle. He was pronounced dead at the scene. The two occupants of the second vehicle were also killed despite having their seatbelts on. Also, the driver of the first vehicle that had gone in the ditch was seriously injured.

A witness, an experienced racing enthusiast, was behind the defendant. He witnessed her driving and the collision. The court described his testimony: “Uhlman had slowed and moved into the center lane when he saw Ireland’s vehicle turn out of its lane, head straight toward the lights, and collide into Richard and Karen’s vehicle. Uhlman did not see Ireland’s vehicle’s brake lights activate; the vehicle hydroplane; or the vehicle attempt to slow down, change its course, or avoid the collision.” *Ireland Slip Opinion*, pp. 3-4

The accident investigation included medical and toxicology evidence and statements from the defendant. In her statements, the defendant admitted that she had taken prescription medication, which tended to cause lethargy and drowsiness. She displayed symptoms of impairment at the scene and during medical treatment. The accident reconstruction evidence showed that the defendant was traveling between 77 and 88 mph when she drove into the back of the second victim vehicle.

The defendant was charged with three counts of vehicular homicide and one count of vehicular assault. The prosecution also charged exceptional sentence aggravating circumstances for (1) the victims having been particularly vulnerable, and (2) for the injuries to the driver of the vehicle that had gone in the ditch having “substantially exceeded the level of bodily harm necessary to satisfy the elements of the vehicular assault offense...” *Ireland Slip Opinion*, pp. 7. The defendant was sentenced above the standard range to a total of 20 years in prison.

Analysis of the Court

The defendant appealed the exceptional sentence. She challenged whether there was substantial evidence to support the exceptional sentence as to the particularly vulnerable aggravator.

The court of appeals began with the general legal standards that apply to exceptional sentences. The aggravating factors that can support an exceptional sentence are statutory. [See RCW 9.94A.535](#). As to the particularly vulnerable aggravating factor, the court noted that, “To impose an exceptional sentence based on finding that a victim was particularly vulnerable, the trial court must find beyond a reasonable doubt ‘(1) that the defendant knew or should have known (2) of the victim’s particular vulnerability and (3) that vulnerability must have been a substantial factor in the commission of the crime.’ ” *Ireland Slip Opinion*, p.10

The court applied the particularly vulnerable standard to the counts arising from the three deaths. It determined that both the tow truck driver (who was out of his rig) and the occupants of the second victim vehicle (who were seat belted in their vehicle) met the requirement for particularly vulnerable. It noted that “the focus is on the victim... and the court assesses ‘if the victim [was] more vulnerable to the offense than other victims and if the defendant knew of that vulnerability.’ ” *Ireland Slip Opinion*, p. 11

As to the tow truck driver, the court held that substantial evidence supported the aggravating factor. This was due to his having been outside and unprotected by a vehicle. But the court also found that substantial evidence supported the aggravating factor as to the couple in the second victim vehicle.

As to the second victim vehicle, the court discussed several prior cases. One of them was a supreme court case worth reviewing, [State v. Cardenas](#). In *Cardenas* the defendant had been driving in a residential neighborhood. He crashed through a wall into a backyard and struck the victim. An aggravated sentence was upheld because it was reasonable to assume that there would be people in the area who would be totally unprepared and vulnerable.

The court in *Ireland* likened the couple in the second victim vehicle to the victim in the *Cardenas* case. The couple were particularly vulnerable, “Because the Stokers were not moving at the time of impact, they experienced an impact of a vehicle traveling between 77 and 88 miles per hour when Ireland collided with their stopped vehicle, which was behind a tow truck with activated overhead lights and loading Travis’s vehicle.” *Ireland Slip Opinion*, pp.14–15

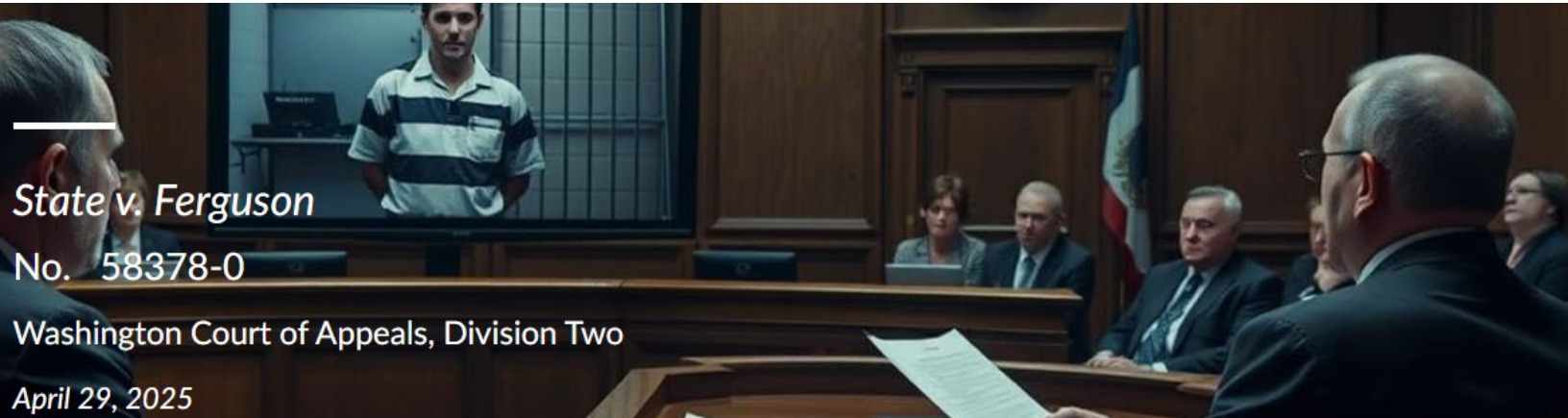
The court in *Ireland* upheld the trial court’s exceptional 20-year sentence in the published part of its opinion. The court also addressed several other issues in the unpublished part of its opinion, which can be reviewed by any interested officer in the slip opinion.

Training Takeaway

The essence of most aggravating circumstances is that the crime committed in a particular case is more serious than the usual case. Report writing can flag such cases as warranting consideration of an aggravated circumstance. One possible example from this case would be to explain in detail why the wearing of seatbelts did not provide meaningful protection for the couple in the second victim vehicle. (This is not to suggest that this subject was *not* included in the officer’s reports; the content of the officers’ reports was not included in the court’s opinion.)

Articulating the reality of the terrible forces involved with a motor vehicle colliding with a stationary vehicle at up to 88 mph would serve to undermine any notion that the couple was not vulnerable and would highlight that such a collision is anything but usual.

EXTERNAL LINK: [View the Court Document](#)



State v. Ferguson, No. 58378-o, Washington Court of Appeals, Division Two (April 29, 2025)

Factual Background

To those officers who do not serve as court officers, it may seem strange that there is an issue of defendants appearing in court in restraints. Nevertheless since at least 2020 due process has been construed to mean that, for every court appearance a defendant has the right to appear in court “free from all bonds or shackles except in extraordinary circumstances.” [See State v. Jackson, 195 Wn.2d 841\(2020\)](#). This case analyzes the issue in the context of pre-trial proceedings before a judge with no jury present.

The facts are not complicated. The defendant was charged with three counts of second degree assault and one count of fourth degree assault. The charges included a firearm aggravating circumstance. The charges arose from four domestic violence incidents. The violence involved in the incidents ranged from the defendant putting a gun to the victim’s head, to strangulation, to shoving. The facts recited by the court did not include the defendant’s history or discipline record while in custody.

After the case was filed, the defendant was brought to court for seven pre-trial hearings. These were all held via video link from the jail. During one of the hearings an issue arose about the defendant not being able to communicate privately with his attorney. The trial judge responded to the problem by ordering that the defendant be brought in person to the courtroom for the hearing. The defendant did not object to his appearances by video.

The defendant was convicted in a jury trial. Apparently, there was no issue concerning restraints during the trial. After his conviction the defendant appealed. One of his issues on appeal was the appearances on video from the jail as having been a violation of his due process right not to appear in court in restraints.

There were several other issues that the court addressed in the partially published opinion. Interested officers may review the court's analysis of those issues in the slip opinion.

Analysis of the Court

The court's analysis of the restraints issue began with the constitutional standards that apply to such cases. The court first noted that defendants have a right to appear in court, even in pre-trial proceedings, free from restraints. But the court also noted that courts may order restraints in individual cases: "But a court has discretion to require restraints in court if it first conducts an individualized inquiry into whether the use of restraints is necessary." *Ferguson Slip Opinion*, p. 7. The court also noted that the use of restraints can constitute harmless error in the event of a violation.

The court in *Ferguson* addressed both whether a restraints violation had occurred, and whether the violation was harmless error. In its review of whether the video appearances were a violation, it reviewed a prior decision from the Washington Supreme Court. See [State v. Luthi](#), 3 Wn.3d 249(2024). That case arose from a post sentence violation hearing. In that case the defendant had appeared in an in-court holding cell for a sentence revocation hearing. The cell was in full view of the trial court judge and the defendant was therefore appearing in court in full view of the judge in a jail-like cell.

The court in *Ferguson* saw the pretrial video appearances as being different from the holding cell in *Luthi*. It stated, "Ferguson did not appear from a clearly visible jail cell located inside a courtroom where the trial court could see the physical cell. And there is no indication in the record that the trial court could see the physical indicia of Ferguson's jail cell in the same way that the trial court could see Luthi's in-court holding cell." *Ferguson Slip Opinion*, p.10. The court also noted that there was no indication that the defendant was in handcuffs or any other bodily restraint apart from the room in the jail where the video feed originated.

After differentiating Ferguson's appearances from the revocation hearing in *Luthi*, the court held that the appearance from jail on video did not by itself violate the restraints standards. "We hold that merely appearing by video from jail or merely appearing in jail alone is not an unconstitutional restraint that requires an individualized inquiry." *Ferguson Slip Opinion*, p. 10

The court also found that if there was a restraint violation, it was harmless. “Even if merely appearing from jail by video is deemed a restraint, the State has satisfied its burden to prove harmless error because the evidence against Ferguson was so overwhelming that no rational conclusion other than guilt can be reached.” *Ferguson Slip Opinion*, p.10

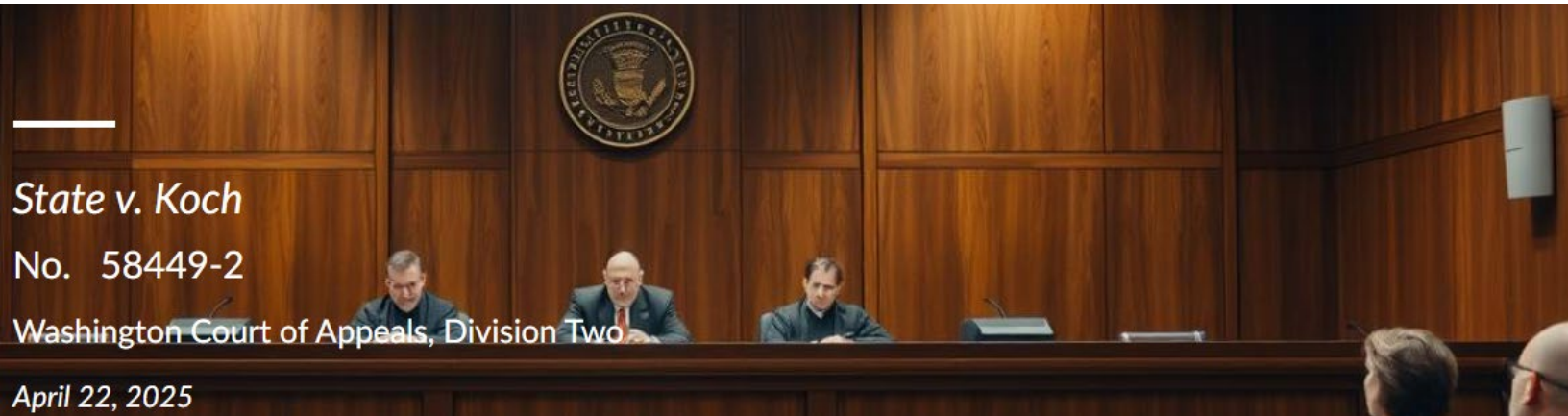
Training Takeaway

One takeaway from this case is that there is incongruity in the decision. A defendant appearing in court in handcuffs or belly chains or shackles constitutes a restraints constitutional violation. Whereas by contrast the same defendant appearing on video from a jail holding cell does not. Both courtroom corrections officers and in-court prosecutors should be cautious in relying on that part of the court’s holding.

More importantly, however for corrections officers serving on court duty, restraints is an important issue. Trial judges are no doubt aware whether defendants are in jail because they are the ones who ordered that they be jailed. It follows that judges must therefore be aware when defendants are subject to restraint. Nevertheless, the restraints issue has been developed by the courts as a federal and state constitutional due process issue. It is a trap for the unwary that carries with it the potential to cause convictions to be overturned.

Diligent court officers will do well to bring restraints issues to the attention of prosecutors as they arise. As with many aspects of criminal trial work, teamwork between officers and prosecutors is always a good policy.

EXTERNAL LINK: [View the Court Document](#)



State v. Koch, No. 58449-2, Washington Court of Appeals, Division Two (April 22, 2025)

Factual Background

Officers who participated in last month's case update training will be aware of the fast pace of change in federal Second Amendment jurisprudence. The [Hamilton](#) case discussed in that training was from a different division of the court that decided this case. The outcome in this case was the same.

The facts are simple. The defendant was convicted of several drug offenses and second-degree unlawful possession of a firearm. The prior conviction element of the second-degree firearm charge was proved by evidence that the defendant had been convicted of several prior nonviolent felony crimes. They included forgery, possession of stolen property, and identity theft. Although these crimes were nonviolent, the two guns the defendant was caught with were quite serious. The guns were “a fully automatic AR-15 rifle, and a ‘ghost’ handgun...” *Koch Slip Opinion, p. 2*

The defendant appealed his conviction of the second-degree firearm charge. His claim on appeal was that under current Second Amendment law (and under Washington’s state constitutional firearms provision), it was unconstitutional for him to have been convicted of the charge when his prior convictions were nonviolent.

Analysis of the Court

The court’s discussion of prior Second Amendment cases included both federal and state cases. The court noted that the United States Supreme Court had recently developed a new framework for analyzing firearms cases but had not held that convicted felons could not be prohibited from possessing firearms. “The United States Supreme Court has not squarely decided whether the government may criminalize possession of firearms by felons consistent with the Second Amendment.” *Koch Slip Opinion, p. 7*


As to state cases, the court discussed prior Washington decisions that have applied the current federal Second Amendment framework. The court noted that those cases have not invalidated Washington firearms statutes. Regarding Koch's challenge the court did not invalidate the second-degree firearm statute either. "The question here is whether a statute prohibiting a person convicted of nonviolent felonies from possessing a firearm violates the Second Amendment. We conclude that the Second Amendment does not protect convicted felons, who by definition are not law-abiding citizens." *Koch Slip Opinion*, p. 9

The court's common-sense holding was supported by its review of both the federal and state cases applying the new federal standards. "These cases, as well as *Ross*, *Bonaparte* and *Olson*, support the conclusion that felons – who are not law-abiding citizens – are not among the class of people that the Second Amendment covers. Otherwise, prohibitions on the possession of firearms by felons would not be presumptively lawful as stated in *Heller*." *Koch Slip Opinion*, p. 10

Training Takeaway

Officers need not engage in a constitutional debate with suspects who are to be charged with unlawful possession of a firearm. Nevertheless, it is worth knowing that so far, the recent and highly publicized development of federal Second Amendment law has not rendered Washington's firearm provisions invalid.

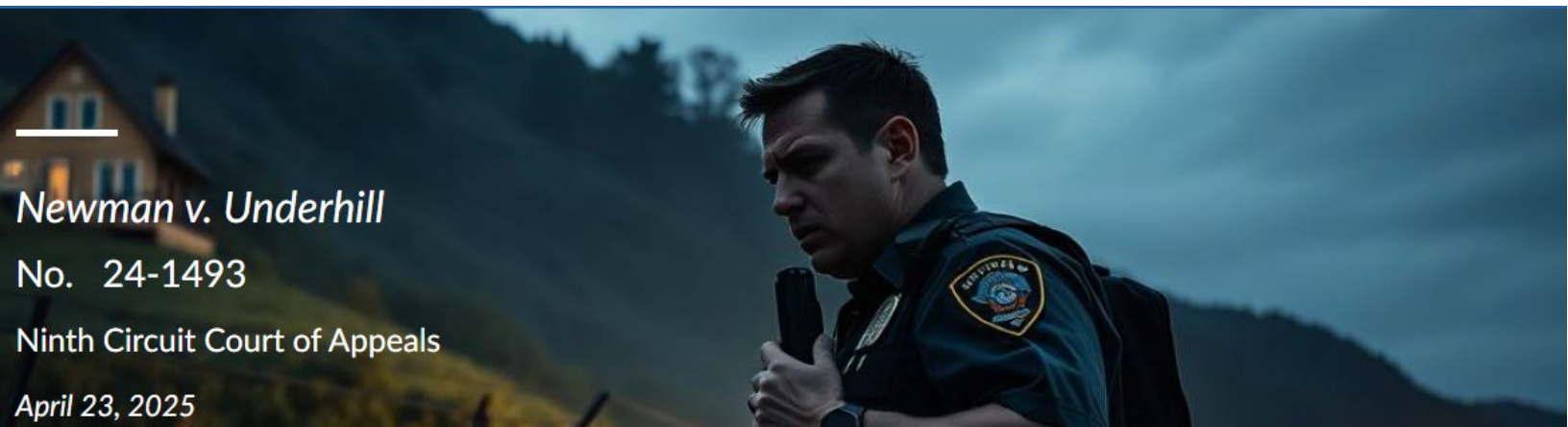
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Federal cases should be reviewed by Washington law enforcement with caution

Federal cases should be reviewed by Washington law enforcement with caution. There are many issues of interest to Washington law enforcement, to include criminal procedure, search and seizure, application of evidence rules, and uses of force, and other constitutional issues, that are decided differently by Washington courts compared to their federal counterparts.

All law enforcement personnel, parties, and agencies must review the actual published case opinions in these cases and consult their agencies' legal advisors, union counsel, and local prosecutors for specific guidance on whether the application of federal cases should be applied to specific issues in specific cases or investigations.



Newman v. Underhill

No. 24-1493

Ninth Circuit Court of Appeals

April 23, 2025

Newman v. Underhill, No. 24-1493, Ninth Circuit Court of Appeals (April 23, 2025)

Factual Background

Alleged violations of suspects' constitutional rights can lead to civil liability in civil rights lawsuits. Most officers will be aware of such liability in use of force cases but other constitutional violations can also provide an opening for a plaintiff to bring a civil rights suit against an officer or a department. This case involved a **warrantless entry** into a residence by an officer in hot pursuit of a fleeing suspect.

The tendency of Washington courts to depart from federal search and seizure standards makes reliance on cases such as this one imprudent. This is especially so in pursuit cases. In light of recent Washington cases and legislation prompted by the "police reform" movement, Washington law may be quite different from federal constitutional law.

The facts in this case include an attempted traffic stop. The jurisdiction was San Bernardino County in California. A deputy sheriff initiated a traffic stop for expired tabs and a license plate illumination violation. The driver stopped the vehicle but fled on foot. The reasons for the suspect's flight were not discussed in any detail by the court in its opinion.

The officer chased the suspect in the direction of a residence. He stopped to clear the vehicle and lost sight of the suspect. However, the area where the suspect had run to was enclosed by a fence and bordered by drop offs in the neighboring terrain. The officer paused in the chase to call for backup. Helicopter support responded along with fellow officers. In total, approximately nine minutes elapsed before the officers approached the residence and made entry to look for the fleeing suspect.

The officers checked the backdoor and found it unlocked. There was radio traffic included in the court record indicating that the pursuing officer believed the suspect had entered the residence. The officers considered the circumstances to be exigent and therefore entered the residence.

They apprehended the suspect in the residence. The suspect turned out to reside at the residence.

The lawsuit plaintiff was not the fleeing suspect. It was his roommate, a quadriplegic. The roommate brought suit alleging that the warrantless entry was an unlawful violation of his Fourth Amendment rights.

The trial court resolved the case against the plaintiff on all counts. The court deemed the entry to be lawful. That decision was appealed to the Ninth Circuit, which affirmed the trial court's dismissal of the civil rights lawsuit.

Analysis of the Court

The Ninth Circuit began with the standards that apply to federal hot pursuit warrantless entry cases. The court began with noting that a home, a private residence, is the “most constitutionally protected place on earth.” *Newman Slip Opinion*, p. 7. The court then noted that one of the narrowly drawn exceptions to the warrant requirement is hot pursuit.

The elements of the hot pursuit exception under federal law are two in number. An officer must establish, “(A) they had probable cause to search Plaintiff’s home and (B) ‘exigent circumstances’ – here, the pursuit of a fleeing suspect – justified the warrantless intrusion.” *Newman Slip Opinion*, p. 8. The court also noted, “Underlying the so-called hot-pursuit exception is the principle that ‘a suspect may not defeat an arrest which has been set in motion in a public place . . . by the expedient of escaping to a private place.’ ” *Id.*

The court’s analysis of the hot pursuit standard began with probable cause. The court quickly determined that the pursuing officer had probable cause but did not specify what offense warranted an arrest. The court simply noted that the pursuing officer had probable cause in light of his personal knowledge of the actions of the suspect when the suspect fled the suspect vehicle to the backyard and then into the residence.

The court then turned to exigent circumstances. In its analysis of the facts, the court responded to the claim from the civil rights plaintiff that the loss of contact caused the circumstances not to be exigent.

The court articulated the hot pursuit standard that applies to federal cases in the Ninth Circuit. “In our circuit, a ‘hot pursuit’ excuses a warrantless intrusion into the home only if the ‘officers [were] in ‘immediate’ and ‘continuous’ pursuit of a suspect from the scene of the crime’ at the moment

they made entry.” *Newman Slip Opinion*, p. 10. The primary issue arising from the standard was whether the pursuit of the suspect with the nine minute delay was “immediate” and “continuous.”

The *Newman* court concluded that the officers’ conduct was in compliance with the hot pursuit exception to the warrant requirement. The court distinguished an earlier case in which 30 minutes had elapsed, and in which there was no reason to believe the fleeing suspect was still in the area. That case held that a violation had occurred. However, in this case, the court considered the officer’s actions in (1) conducting an area check of the backyard coupled with his having checked the backdoor, and (2) having had “a reasonably good idea” where the suspect was hiding, meant that hot pursuit was maintained as immediate and continuous.

The court upheld the dismissal of the civil rights lawsuit against the officers and their department.

Training Takeaway

The outcome of the *Newman* case rested on the court’s common-sense view of the facts. The court did not articulate that the officer’s prudence in pausing the pursuit to ask for backup was a factor. But surely it could have been. It is notable however that the hot pursuit standard applied by the court did not include a specific reference to officer or public safety. For this reason, caution should be applied to any reliance on the outcome of this case when applied to pursuit issues in Washington.

EXTERNAL LINK: [View the Court Document](#)

Cases and References

1. *State v. Zghair*, No. 102787-7, Washington Supreme Court (April 17, 2025)
 - a. [Zghair Slip Opinion](#)
2. *State v. Buck*, No. 39445-0, Washington Court of Appeals, Division Two (April 10, 2025)
 - a. [Buck Slip Opinion](#)
 - b. [State v. Sandholm](#), 184 Wn. 2d 726 (2015)
 - c. [State v. Nonog](#), 145 Wn. App. 802 (2008)
3. *State v. Ireland*, No. 58212-1, Washington Court of Appeals, Division Two (April 29, 2025)
 - a. [Ireland Slip Opinion](#)
 - b. [State v. Cardenas](#)
4. *State v. Ferguson*, No. 58378-0, Washington Court of Appeals, Division Two (April 29, 2025)
 - a. [Ferguson Slip Opinion](#)
 - b. [State v. Jackson, 195 Wn.2d 841\(2020\)](#)
 - c. [State v. Luthi](#), 3 Wn.3d 249(2024)
5. *State v. Koch*, No. 58449-2, Washington Court of Appeals, Division Two (April 22, 2025)
 - a. [Koch Slip Opinion](#)
6. *Newman v. Underhill*, No. 24-1493, Ninth Circuit Court of Appeals (April 23, 2025)
 - a. [Newman Slip Opinion](#)

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- [Legal Update for WA Law Enforcement](#) authored by retired Assistant Attorney General, John Wasberg
- [Caselaw Update](#) by WA Association of Prosecuting Attorneys