



Law Enforcement Digest



Covering cases published in September 2025

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Cases in the Law Enforcement Digest are briefly summarized, with a focus on how the rulings may impact Washington law enforcement officers or shape future investigations and charges. Each cited case features a hyperlinked title for those interested in reading the court's full opinion. Additionally, links to key Washington State prosecutor and law enforcement case law reviews and references are provided.

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LED Author: James Schacht

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

September brought beautiful fall weather and four cases of interest to law enforcement. Two of the state cases, Ray and Quija, involve the elements of several criminal offenses. The other two are of more general interest because they involve appellate and end-of-sentence issues. The final two cases are from the Ninth Circuit. The Jones case in particular is worth reviewing and comparing to the Newman use-of-force case that was digested in April 2025. Links to the Jones case, and the April digest of Newman are included in the discussion of Jones.

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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.

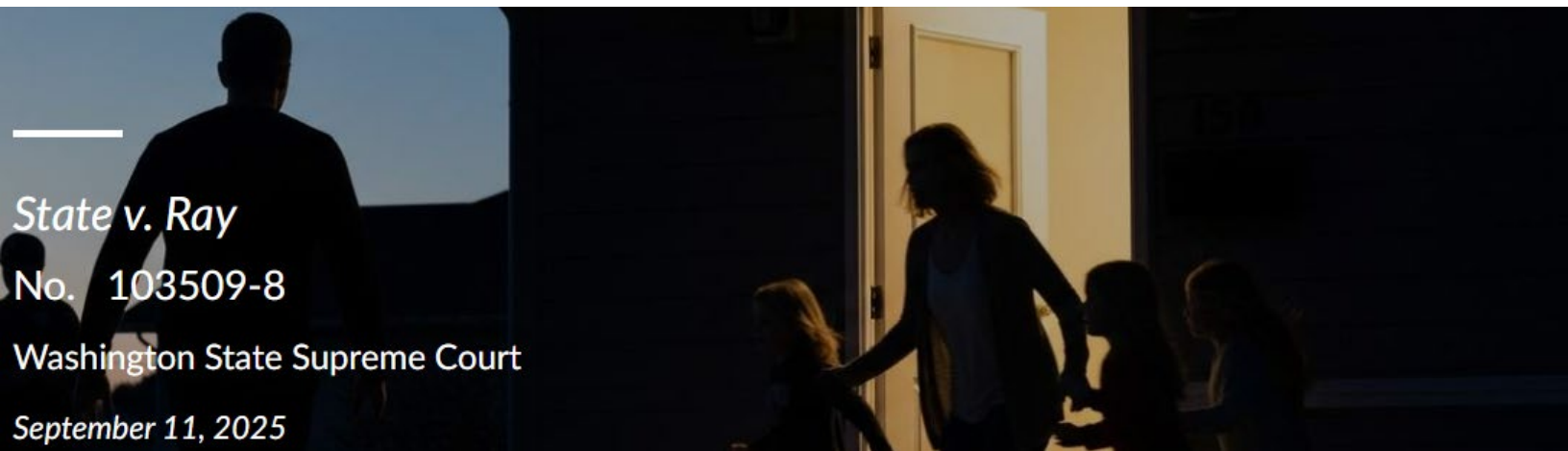
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Note: You may see *Id* at the end of some paragraphs in this LED. It is used to refer to the immediately preceding citation.

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. Ray

No. 103509-8

Washington State Supreme Court

September 11, 2025

State v. Ray, No. 103509-8, Washington State Supreme Court (September 11, 2025)

Factual Background

This case involves double jeopardy. The issue stems from multiple charges out of a single incident. Charging decisions are the privilege and responsibility of prosecutors. Such decisions take into account strategic considerations, such as what evidence would be relevant on each charged offense, and legal issues such as double jeopardy. For law enforcement, it is helpful to be aware of these considerations both during the investigation and in making referrals for prosecution.

The charges arose from a domestic violence incident. The defendant was a lieutenant colonel in the army and was working as chief of staff for Joint Base Lewis-McChord. He and his wife had been married for over 20 years. They had three children ranging in age from seven to sixteen.

The marital relationship began to deteriorate in the months and years leading up to the incident. Evidence at trial indicated that alcohol and service-related stress, or both, caused or contributed to escalating marital discord. Nevertheless, the couple lived together with the kids in a three-story residence on base.

The entire family was together the night of the incident. They watched a movie. The defendant consumed alcohol, but the opinion does not indicate that intoxication played a significant part in the incident. During the movie conflict erupted. It was precipitated by the oldest child needing a ride to work the next day. The teenager expressed a preference for the wife to do the driving.

The defendant began yelling at his wife. He accused her of hurting his credibility with the children. The three children were sent to bed on the third floor of the family residence. The wife helped the children get ready for bed and took a shower herself. The defendant, meanwhile, went to the garage and worked on firearms that were to be used at a shooting range.

A text message to the wife during the time they were each in separate parts of the residence hinted that the defendant was not done yelling.

The wife came downstairs and heard the defendant yelling at the TV. She closed a door to keep the yelling from waking the children. The defendant got angrier, and this caused the wife to go to the second floor. The defendant continued to yell, and this told her that he would continue the yelling and come upstairs. She retreated to the third floor where the children were because the defendant typically would not yell in front of the children.

The defendant could be heard from the third floor. He was aggressive and was opening doors and turning on lights. The wife became concerned enough to key 911 into her phone but without hitting send. The defendant made it to the third floor, and the wife could then see that he had a handgun. She told him to put the gun away or she would call 911. He said “go ahead.”

The wife was in the bedroom where the two younger children were in bed. She hit send. The incident escalated quickly during the 911 call. The defendant advanced on his wife with the gun. When she fell to the floor, he kicked her in the torso and repeatedly pointed the gun at her. She crawled into a narrow space between a bed and a wall in the hope that the children would not see her get shot.

The defendant continued the assault while his wife was between the bed and the wall. He continued to kick her while she was on the ground, and he pointed the gun at her. The children screamed at him not to kill their mother.

The incident on the third floor lasted approximately 20 minutes. During that time, the defendant pointed the gun at the wife and at the children. The wife resolved that she and the children would escape. She put herself between the defendant and the children and persuaded him to let the children go. He finally seemed to agree and stepped back from in front of the door. The wife and children fled and made it outside and into the protection of the responding law enforcement officers.

The defendant's standoff with the officers lasted nearly two hours. He verbalized that he blamed his wife for what was happening, and he put the gun to his own head. Law enforcement successfully de-escalated the standoff and was not forced to use deadly force. The defendant surrendered and was taken into custody.

The defendant was charged with seven criminal offenses against his wife and children. He was convicted at trial. His defense was *not* that he didn't do it, but that his intent was self-harm rather than harm of his wife and children.

After being convicted and sentenced, the defendant appealed. One of the appellate issues was double jeopardy. That was the issue that the Supreme Court agreed to hear. The issue involved two of the charges, second-degree assault and felony harassment. Both charges were based on the same events that took place on the third floor.

Analysis of the Court

The court began with a general discussion of double jeopardy. It noted that both the Washington State Constitution and the Federal Constitution include double jeopardy clauses. It also noted that the clauses include several slightly different protections. One is protection against multiple, successive prosecutions for the same criminal offense. Another is protection against multiple punishments for a single incidence of criminal conduct. It was the second protection that was at issue in this case.

The legal standard that applied was not new or questioned in the appeal. It was the application of the standard to the second-degree assault and felony harassment charges that was at issue. The court described the general legal principle as follows: “[T]he double jeopardy clause prohibits multiple *convictions* for the same offense, just as it prohibits multiple *punishments* for the same offense.” *Ray Slip Opinion, p. 13 (italics provided by the court)*

In the case of a multiple conviction claim, the court noted that punishment for criminal offenses is the right and responsibility of the legislature. Thus, multiple punishments for a single criminal incident are not always prohibited. It is only when the offense as defined by the legislature is the same both in fact and law that double jeopardy is violated.

The court noted that a four-part test is used to determine if two offenses are the same for double jeopardy purposes. The test analyzes the issue as follows:

- Whether there is “any express or implicit legislative intent” to authorize or prohibit separate punishments.
- Whether when comparing “the elements of the two offenses at issue” the courts “determine whether they are the same...”
- Whether the “merger doctrine” should apply in the case of lesser included offenses.

- Whether there are “other indicators of legislative intent” for “any ‘clear evidence’ [that] could overcome” the presumption arising from the same elements test.

Ray Slip Opinion, pp. 15-16

The court applied the four-part test and determined that the two crimes are not the same for double jeopardy purposes. The court found that there was no clear legislative intent to either permit or prohibit separate punishment for the two crimes. There was no express pronouncement and the inferences to be drawn from legislative history did not point one direction or the other. Therefore, the court focused on the elements of the two offenses.

The elements analysis showed more clearly that separate punishment was intended. The two crimes have different mental states, namely intent and knowledge. Thus, it could not be said that the elements are the same. “To convict Ray of second-degree assault, the jury was required to find Ray ‘intentionally assault[ed]’ Kristin ‘with a deadly weapon’ by committing an ‘act’ to make Kristin feel ‘reasonable apprehension and imminent fear of bodily injury.’ ... By contrast, to convict Ray of felony harassment, the jury was instructed that it must find Ray ‘knowingly threatened to kill’ Kristin by ‘directly or indirectly’ communicating his intent to kill her, using “words or conduct’ that placed Kristin ‘in reasonable fear that the threat to kill would be carried out.’ ” *Ray Slip Opinion, p.24*

The difference between intent and knowledge was only one difference between the two offenses. There were two others. One of the offenses involves an actual assault rather than just a threat. It also involves reasonable fear of bodily injury rather than fear of killing or death. These differences were more than enough to show that the two crimes were not the same in law. Even though the prosecution relied on the same evidence for both crimes, the crimes themselves were not the same for double jeopardy purposes.

The final aspect of the two crimes that made them distinct was that there was no evidence that the legislature intended only one punishment. “As a result, we must conclude that the legislature intended to authorize separate punishments for second-degree assault and felony harassment, as charged and proved in this case.” *Ray Slip Opinion, p.28*

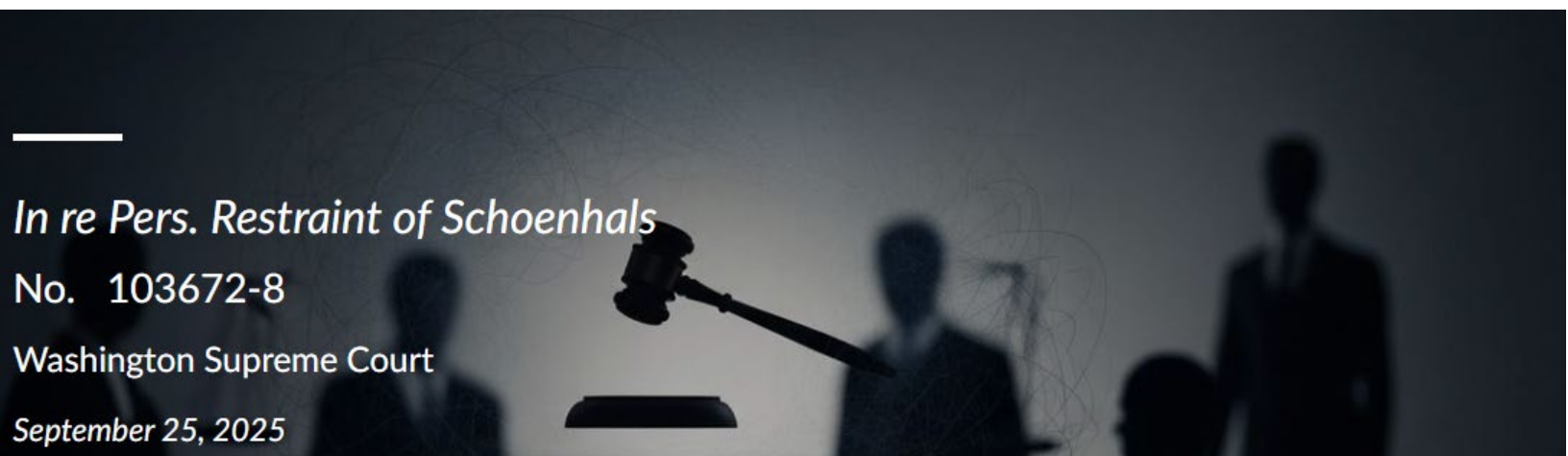
This was a unanimous decision. All nine justices agreed with the analysis. Insofar as whether law enforcement can rely on this case as good law, this is as good as it gets.

Training Takeaway

The correctness of charging both assault and felony harassment is not a central concern for law enforcement. The final charging decision must always be made by the prosecution. Nevertheless, adding both charges to a booking is worth considering, as is the need to prove both intent to assault and a knowing threat to kill.

Proof of the mental state of each of these charges can be a challenge. In the case of an assault with a deadly weapon or an assault that inflicts actual injury, intent to assault may be obvious. But proving that a defendant had knowledge that his threatening words or conduct in fact constituted a threat to kill, may be much less obvious. It would be helpful in cases where the defendant uses ambiguous words during an incident to paint the picture of how threatening the incident was from his behavior.

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



In re Pers. Restraint of Schoenhals

No. 103672-8

Washington Supreme Court

September 25, 2025

In re Pers. Restraint of Schoenhals, No. 103672-8, Washington Supreme Court (Sept 25, 2025)

Factual Background

Victims of violent crimes frequently ask law enforcement officers about how long the criminal proceedings will last. In the minds of victims, closure can be thought of as occurring when the perpetrator is convicted and sentenced in the trial court. Increasingly, however, conviction, sentencing, and the successful completion of a direct appeal do not bring about closure. **This case is an example of the lack of finality in criminal proceedings.**

This case involves a so-called *Monschke* class defendant. The label is derived from a decision of our Supreme Court in a notorious and heinous white supremacist aggravated murder case. [See *In re Pers. Restraint of Monschke*, 197 Wn.2d 305 \(2021\)\(opens in a new tab\)](#) The *Monschke* case held that mandatory, non-discretionary life without parole (LWOP) sentences for 18 to 20-year-old young adults are unconstitutional. A collateral consequence of the decision has been to create a class of incarcerated, convicted aggravated murderers who are entitled to be re-sentenced years or decades after their cases were thought to be final.

The court did not include any details of the defendant's crime. The crime was committed in 1985 when the defendant was a 20-year-old adult. He was convicted in 1986. The opinion made only a brief reference to the facts. The defendant committed the murder during a burglary of a family home. The victim was a 14-year-old boy. The defendant was convicted of aggravated first-degree murder by a jury, which means that it was a premeditated murder and committed with an aggravating circumstance. The opinion does not indicate whether the death penalty was sought, but in any event, the defendant was sentenced to LWOP.

In 2023, some 38 years after the murder and two years after the *Monschke* decision, the defendant filed a personal restraint petition (PRP). The victim's family had been living without their son during the 38 years, and the defendant had since become a 58-year-old man while in prison.

The PRP was based on the 2021 *Monschke* decision, which had declared mandatory, non-discretionary LWOP sentences unconstitutional “cruel and unusual” punishment for an 18 to 20-year-old offender. The PRP was transferred to the Supreme Court, which accepted review for the purpose of deciding whether procedural barriers to PRP petitions should be relaxed in the case of *Monschke* class aggravated murder defendants.

Analysis of the Court

The court held in 2021 that mandatory, non-discretionary LWOP was unconstitutional. Mandatory LWOP (life without parole) is the only legislatively approved sentence for *Monschke* class young adults (and all other adults over the age of 18) for Washington’s most serious crime, aggravated murder. [See RCW 10.95.030\(opens in a new tab\)](#). The questions answered in this case were procedural. They concerned whether aggravated murder defendants could take advantage of the *Monschke* decision and require that they be re-sentenced.

The court began with the statute that makes untimely (more than a year old) PRP’s time barred. [See RCW 10.73.090.\(opens in a new tab\)](#) The court noted that a provision of the time bar statute states that a “significant change in the law” can be an exception to the time bar. *Schoenhals Slip Opinion*, pp. 5-6. It then determined that its own *Monschke* decision constituted a significant change in the law.

In addition to a “significant change in the law”, the court noted that Schoenhals was required to show that *Monschke* was material to his sentence. Material means that *Monschke* must include a principle of law that applies to the defendant’s sentence. On that point, the court had no trouble holding that the decision was indeed material since the defendant was 20 years old when he committed the murder and was sentenced to *mandatory* LWOP by a trial judge who correctly thought at the time that he had no discretion.

Significant change in the law, plus materiality, did not complete the analysis. The court next considered whether the *Monschke* decision should be applied retroactive. It held that it should be. The court stated, “We now hold that *Monschke* is a substantive rule with retroactive effect. Under RCW 10.95.030, *Monschke* requires courts to consider the youth of an offender aged 18 to 20 years old before imposing a LWOP sentence.

The rule does not prevent courts from imposing a sentence of LWOP. However, it does prevent courts from automatically imposing LWOP sentences to offenders between the ages of 18 and 20 years old without first meaningfully considering the offender's youth. Thus, the substantive nature of this rule stems from its call for individualized sentencing for a select class of defendants." *Schoenhals Slip Opinion*, pp. 16-17

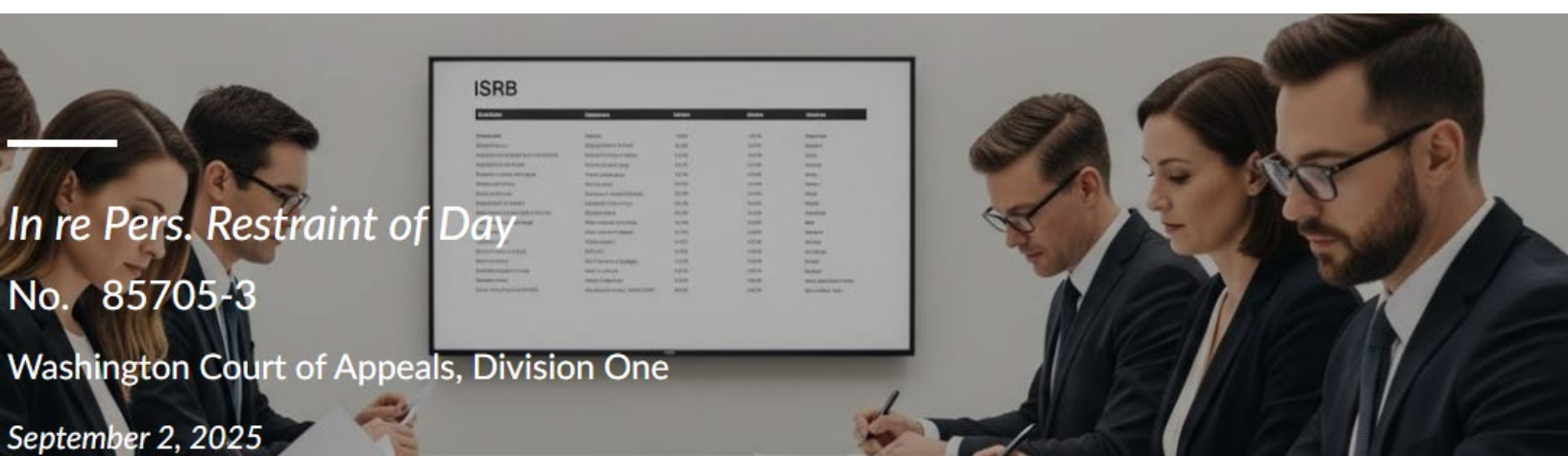
The last sub-issue decided by the court concerned "actual and substantial prejudice." The court noted that showing such prejudice could imply a requirement that the defendant show that the original sentencing judge would have imposed a less than LWOP sentence if he or she knew that they could. The court rejected that notion. "*Monschke* petitioners should not be required to show the impossible, that the original sentencing judge would have lowered their sentences had they had the ability to exercise discretion and consider mitigating evidence of the offender's youth. *Monschke* petitioners show that they were actually and substantially prejudiced by showing that *Monschke* is material to their sentence." *Schoenhals Slip Opinion*, p. 23

The foregoing discussion of the legal analysis of the court in this case admittedly does not directly impact the investigative work of law enforcement. Nevertheless, it is worth being generally aware of. For some defendants in Washington, especially those who committed some of the most egregious and heinous crimes, criminal case proceedings cannot be said to be over even after 38 years. Statutes that establish punishment for the most serious crimes can be overturned and such decisions can be applied retroactively. Under such circumstances, it would not be an exaggeration to tell a victim's family that a case is never truly over.

Training Takeaway

The training takeaway from this case is the existence of a *Monschke* class of defendants. These are offenders who were adults because they were over the age of eighteen when they committed aggravated murder. They are also members of the class because they were 18 to 20 years of age when they committed their crimes. Such class members are entitled to be re-sentenced without the statutory mandate of LWOP restricting the re-sentencing court. And so far there is no time limit for when a class defendant may seek re-sentencing.

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



In re Pers. Restraint of Day, No. 85705-3, WA Court of Appeals, Division One (Sept 2, 2025)

Factual Background

This case, like the *Schoenhals* case, involves an issue more pertinent to prosecutors than law enforcement. It concerns the Indeterminate Sentencing Review Board (ISRB) and its work at the end of a defendant's sentence. Defendants who are sentenced to an indeterminate sentence (that is, a sentence that has no high-end sentencing limit) are examined for whether they are safe and appropriate for release by the ISRB. This case involves an issue of how the ISRB did its job.

Many of the crimes that are eligible for indeterminate sentences are sex offenses. **This case involved first-degree child molestation.** The defendant was convicted of two counts of child molestation and one count of communicating with a minor for immoral purposes. He was sentenced to an indeterminate sentence of “89 months to life” for the two molestation counts and a determinate sentence of 12 months concurrent on the communicating charge.

While in prison, he availed himself of sex offender treatment. The success of treatment was limited. He disclosed during treatment that he had violated 50–100 victims that he was never prosecuted for, and that he had had an addiction to child pornography. Nevertheless, the defendant petitioned for early release in 2017. It was denied. He petitioned again in 2019 and was again denied.

Meanwhile, the Department of Corrections End of Sentence Review Committee (ESRC) recommended that the defendant be evaluated as a sexually violent predator (SVP). He was evaluated by a forensic psychologist and found to meet the criteria for civil commitment as an SVP. The psychologist noted that “the actuarial risk assessments generally classified Day as an above average risk of sexual reoffending and that these assessments likely underestimate Day’s risk of reoffending.” *Day Slip Opinion*, p. 3.

After the SVP evaluation, the defendant petitioned, for the third time, for early release. The ISRB denied early release, but in a court challenge, acknowledged that it had erred in how it had considered the defendant's case. It thus set a fourth early release hearing during 2023.

The ISRB denied early release again after the fourth hearing. It explained its decision in a written ruling. The defendant disputed the ruling and filed a Personal Restraint Petition (PRP). The court of appeals analyzed the legal sufficiency of the 2023 ISRB decision in this opinion.

Analysis of the Court

The court began by discussing the statutory standard that is required to be applied by the ISRB in early release proceedings. The court noted that a similar statute applies to violent juvenile offenders, has been interpreted by our supreme court, and provides guidance as to how the ISRB is to do its work. Compare [RCW 9.94A.730\(opens in a new tab\)](#) and [RCW 9.95.420\(opens in a new tab\)](#). “Both statutes contain a presumption of release and require the ISRB to release the offender under ‘appropriate’ ‘affirmative and other conditions’ unless it finds by a preponderance of the evidence that ‘despite such conditions’ the offender is more likely than not to reoffend.” *Day Slip Opinion*, p. 8. [See *In re Pers. Restraint of Dodge*, 198 Wn2d 826\(2022\).\(opens in a new tab\)](#)

The presumption recognized in the *Dodge* case impacted the court's decision in this case. The starting point for the ISRB is release. It is a statutory requirement that must be overcome if an offender is to remain behind bars.

The presumption was enough to invalidate the ISRB's decision in this case. It was enough even though the defendant was not only a convicted child sex offender but was also evaluated as a potential SVP. The court applied a review standard in its evaluation of the ISRB's decision. “The ISRB abuses its discretion if it ‘bases its decision on ‘an erroneous view of the law,’ or when it ‘acts without consideration of and in disregard of the facts.’ ” *Day Slip Opinion*, p.6

Under the review standard, the court found fault with the ISRB. “[T]he ISRB did not discuss why electronic monitoring, geographic restrictions, mental health treatment compliance, participation in sex offender treatment in a community setting, or other proposed release conditions could not reduce Day's risk to an appropriate level.” *Day Slip Opinion*, p.9. And having not discussed “why” in its decision, the court determined that it was conclusory and legally insufficient.

The court also discussed why the SVP evaluation, which found the defendant to be appropriate for civil commitment as a “sexually violent predator,” was not enough. The court pointed out that the prosecution had never filed an SVP petition. Thus, the ISRB was in effect presuming the defendant to be an SVP when he had never been found by a court to be an SVP. Allowing such a presumption would invalidate the statutory presumptions that the ISRB must apply, according to the court.

The result of the court’s analysis was to remand the case back to the ISRB for yet another early release hearing. This would be a redo of the third and fourth hearings. The ISRB was instructed to specifically answer the “why” question and articulate why the proposed release conditions would not be sufficient to keep children and the community safe from the defendant if he were to be released.

Training Takeaway

The possibility of civil commitment for sexually violent predators affected the outcome in this case. Such cases can be brought by prosecutors or the state attorney general’s office. The ISRB would surely have been aware that the defendant could be civilly committed if he was proven to be as dangerous as he was depicted in the forensic psychological evaluation.

For law enforcement, there are two takeaways. First, an indeterminate sentence does not necessarily mean a defendant will continue to be incarcerated at the end of his minimum term. The ISRB operates under a presumption of release. And second, for repeat and violent sex offenders, SVP civil commitment is an option that officers can urge upon prosecutors and the attorney general’s office for the most egregious offenders.

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



State v. Quijas

No. 86476-1

Washington Court of Appeals, Division One

September 8, 2025

State v. Quijas, No. 86476-1, Washington Court of Appeals, Division One (September 8, 2025)

Factual Background

This case involves a constitutional challenge to the prison riot statute. It is a challenge that had not been previously considered by the courts and is thus a “case of first impression.” The challenge was based on both a “vagueness” argument and an “overbreadth” argument. The court rejected both challenges in the published part of its opinion.

The defendant was charged with two counts of prison riot, together with associated assault offenses. The charges stemmed from two 2022 fighting incidents that took place in the Skagit County Jail. The details of the two incidents were not described by the court. The fights were said to have been between “two antagonistic groups of inmates,” which probably adequately paints the picture of what happened. Two inmate victims received medical treatment, but there was no indication of weapons, broken bones, or other serious injury.

The defendant was charged with two counts of prison riot and misdemeanor assault. The prison riot charges are Class B felonies, whereas the assaults are misdemeanors. The case was tried before a jury. In the trial court, the parties argued about whether the prison riot charge must include a mental state element. No such element was specified in the statute. The trial court found that it was implied and therefore added intent to the jury instructions.

The defendant was convicted and sentenced. The opinion in this case is from his direct appeal. The court’s opinion was partially published. The published part concerned the constitutional challenge to the prison riot statute. Other less momentous challenges were left to the unpublished part of the opinion. Interested officers may review those issues in the slip opinion.

Analysis of the Court

The defendant's appeal included two constitutional due process challenges. The first was vagueness and the second was overbreadth. The court began with vagueness. The court quoted the statute as providing: "(1) Whenever two or more inmates of a correctional institution assemble for any purpose, and act in such a manner as to disturb the good order of the institution and contrary to the commands of the officers of the institution, by the use of force or violence, or the threat thereof, and whether acting in concert or not, they shall be guilty of prison riot." *Quijas Slip Opinion*, p. 2-3

The legal standards that apply to a vagueness challenge are forgiving. They tend to encourage the statute to be upheld. A statute can be considered vague if (1) it "does not define the criminal offense with sufficient definiteness that ordinary people can understand what conduct is proscribed," or (2) "does not provide ascertainable standards of guilt to protect against arbitrary enforcement" *Quijas Slip Opinion* p. 4-5. The court analyzed the prison riot statute under both standards.

The court noted that several terms were left undefined and that therefore dictionary definitions could be referenced. That part of the analysis led the court to conclude that the definitions of terms such as "assemble" and "act" and "contrary" all include an intentional or volitional denotation. Thus, intent could be included as an "implicit intent requirement" as has been done with other statutes that lack a statutory intent element. Once intent was added, the court was able to conclude that "ordinary people" could understand the conduct that was prohibited. Such conduct would need to be intentional.

The court also considered an argument that the types of acts required by the statute were not sufficiently defined. But in response to that argument, the court pointed out that "Here, the statute requires, not just that the good order of the institution be disturbed or the defendant-inmate gather for some purpose, but that the defendant-inmate utilize 'force or violence, or the threat thereof' in doing so... That is, the use of force, of violence, or of threat thereof defines the *actus reus* and allays any ambiguity in the terms 'disturbs,' 'good order,' and 'any purpose' when viewed in isolation." *Quijas Slip Opinion*, p. 9

The court also considered whether the way the statute was written allowed for arbitrary enforcement. It held that it did not. "These arguments disregard the fact that RCW 9.94.010(1) only criminalizes an inmate's action that is, among other elements, contrary to an officer's command if and only if that action is done by 'force or violence, or the threat thereof.' " *Quijas Slip Opinion*, p. 11

After reviewing the vagueness arguments, the court turned its attention to overbreadth. The legal standard for overbreadth was described as follows: “[A]n ‘enactment is overbroad if it ‘sweeps within its prohibitions’ a substantial amount of constitutionally protected conduct.” *Quijas Slip Opinion*, p. 12. Overbreadth is related most often to First Amendment protections.

The court rejected the overbreadth challenge just as it had rejected the vagueness challenge. “We hold RCW 9.94.010’s plain and unambiguous focus on force or threats thereof ‘does not reach a substantial amount of constitutionally protected speech’ because the statute only seeks to regulate violent assemblies—to which there is no right, particularly in a penological setting—and is thus ‘not overbroad.’ ” *Quijas Slip Opinion*, p.15

Training Takeaway

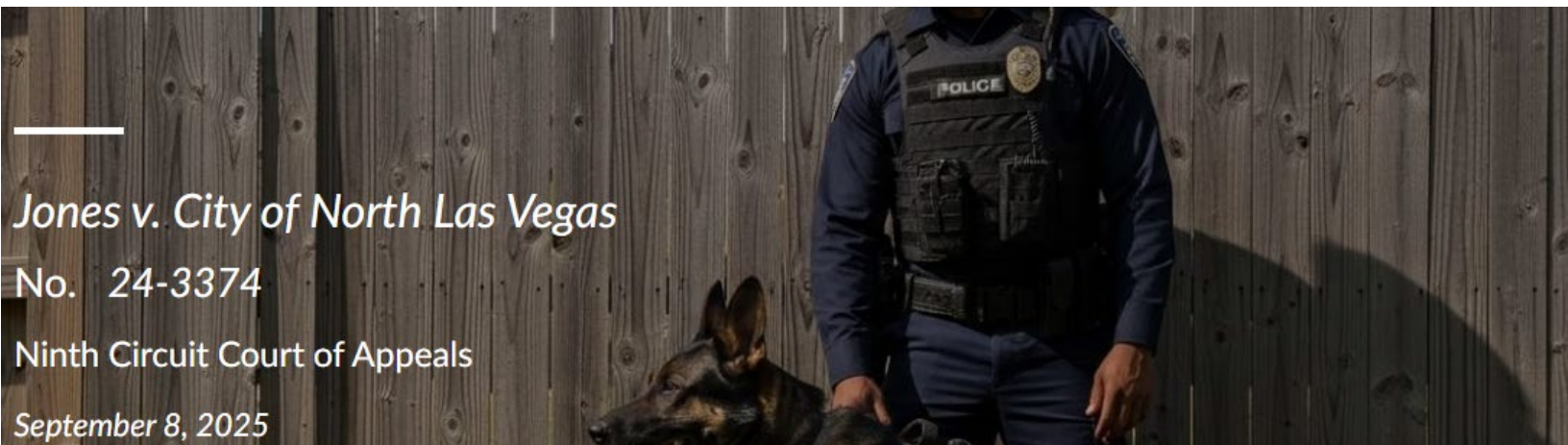
There is an important takeaway for law enforcement from this case. As a case of first impression, the courts had not previously considered its constitutionality. The court did consider constitutionality in this opinion and read into the statute an intent requirement. The addition of an implicit, but not specifically listed, element in a criminal statute can present a stumbling block for law enforcement and prosecutors. Both must be aware of the need to prove, and to include in jury instructions, an element that does not actually appear in the statute.

For law enforcement, the implicit intent element probably presents little concern. It is hard to imagine an inmate engaging in violence without intending to do so. However, for prosecutors, making sure their jury instructions include intent will mean the difference between convictions being upheld and overturned.

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

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.



Jones v. City of North Las Vegas

No. 24-3374

Ninth Circuit Court of Appeals

September 8, 2025

Jones v. City of North Las Vegas, No. 24-3374, Ninth Circuit Court of Appeals (Sept 8, 2025)

Factual Background

Civil rights use-of-force cases reviewed by the Ninth Circuit generally involve federal questions under the federal constitution rather than state questions. This case is no different. It came before the court on an **appeal from a summary judgment dismissal in favor of the officers and the city** in the trial court. The court here reversed the dismissal and remanded the case back to the trial court for a possible trial.

The incident that led to the lawsuit originated as a domestic violence call. Several officers responded. One officer contacted the victim, and another checked the backyard. The victim denied that any assault had taken place. Meanwhile, the officer checking the backyard saw a suspect fleeing over a wall.

The officer who saw the suspect did not immediately give chase. Instead, he prudently “hurried to his car, called for backup, and drove two blocks south to establish a perimeter around the area. At least eighteen minutes passed before a K-9 unit alerted in the direction of Plaintiff’s backyard, several houses away from where the suspect had disappeared.” *Jones Slip Opinion, p. 4*

The K-9 alerted on a backyard that was some distance from the original call. The K-9 officer did not immediately enter the backyard after the alert. He saw doghouses but no dogs. After concluding wrongly that there were no dogs, he entered the backyard and had his K-9 partner passed over the wall to join him. This caused the dogs to show themselves. There were three pit bulls. They attacked the officer and the K-9. The K-9 handler shot and killed two of the pit bulls as he fended off the attack.

The slip opinion does not report what happened with the domestic violence call and the fleeing suspect. But the homeowners of the house where the two pit bulls were killed sued the officers and the city. The officers and the city brought a summary judgment motion. The trial court ruled that the search entry into the backyard was lawful because it occurred during hot pursuit and therefore under exigent circumstances.

Analysis of the Court

The Ninth Circuit began its analysis with a restatement of the legal standards that apply to civil rights claims based on unlawful search and seizure allegations. The entry into the backyard was analyzed as an alleged unlawful search, and the shooting of the dogs was analyzed as an alleged unlawful seizure. The standards are related to the question of whether the officers may rely on qualified immunity.

The court's articulation of the constitutional search standards began with the Fourth Amendment. "Qualified immunity protects government officials from liability under §1983 'unless (1) they violated a federal statutory or constitutional right, and (2) the unlawfulness of their conduct was clearly established at the time.' " *Jones Slip Opinion*, p. 8. As to the question of whether the entry into the backyard was a search, the court quickly concluded that it was.

A warrantless search is not unlawful under federal constitutional law if it is supported by "exigent circumstances." "To rely on the exigent circumstances exception, the government 'must satisfy two requirements: first, the government must prove that the officer had probable cause to search,' and 'second, the government must prove that exigent circumstances justified the warrantless intrusion.' " *Jones Slip Opinion*, p. 9. The specific exigent circumstances exception that was cited in this case by the officers and city was "hot pursuit."

As to the hot pursuit standard the court noted that prior case law had established what must be shown. “The hot pursuit exception to the warrant requirement only applies when officers are in ‘immediate’ and ‘continuous’ pursuit of a suspect from the scene of the crime.” *Jones Slip Opinion*, p.9–10. As to the continuity of the pursuit, the court noted that continuity is not maintained where a chase is terminated for a significant period of time.

The court held that the pursuit in this case was similar to pursuits from other prior cases that had held that a pursuit was not continuous. In one case, the suspect ran into a wooded area that was not contained and remained at large for over half an hour. See [United States v. Johnson, 256 F.3d 895, 905 \(9th Cir. 2001\)\(opens in a new tab\)](#). The court held that the eighteen minute delay and the actions of the officer in returning to his car, calling for backup, and driving to another location to establish a perimeter, were enough to prevent the pursuit in this case from being continuous.

The court also commented on a hot pursuit case decided in April 2025. That case, *Newman v. Underhill*, held that the pursuit was lawful. (The *Newman* case was summarized in the April 2025 edition of this digest. See [Law Enforcement Digest, April 2025.\(opens in a new tab\)](#)). The court compared *Newman* to this case as follows: “[In *Newman*] Officers lost sight of the suspect for nine minutes but had probable cause to believe he was in the plaintiff’s house, given that the suspect had been headed in that direction, he was not in the backyard, the terrain and fences would have hindered his flight to an adjacent property, the plaintiff’s backdoor was unlocked, and the officer perceived someone interacting with the backdoor at some point during the pursuit. ... We held that the pursuit’s continuity was unbroken because the officers ‘had a reasonably good idea where [the suspect] was hiding’ for the duration of the nine minutes after they lost sight of him.” *Jones Slip Opinion*, p. 11

The court rejected the argument that the K–9 alert on the backyard made this case the equivalent of *Newman*. The court deemed the passage of time to work against the continuity of the search, even if the K–9 alert may have provided probable cause.

Having determined that the search (the entry into the backyard) was not lawful, the court turned to the question of whether the use of force (the shooting of the dogs) was lawful. On that issue, the court held in the officer’s favor. “Even where officers have violated clearly established law with a warrantless search, we cannot rely on that warrantless search to say that an officer’s otherwise reasonable subsequent use of force was excessive.” *Jones Slip Opinion*, p. 13

The court noted that the circumstances and the caution used by the K-9 officer supported the reasonableness of his use of force. He discovered that the dogs were in the backyard only after having completed the entry with his K-9 partner. That was also the moment when he knew that he was facing off with three pit bulls. “Because Plaintiffs do not offer, and we cannot find, any cases clearly establishing that Lieutenant Salkoff’s actions were unreasonable, he is entitled to qualified immunity and summary judgment with respect to his use of force against Plaintiffs’ dogs.” *Jones Slip Opinion*, p. 14

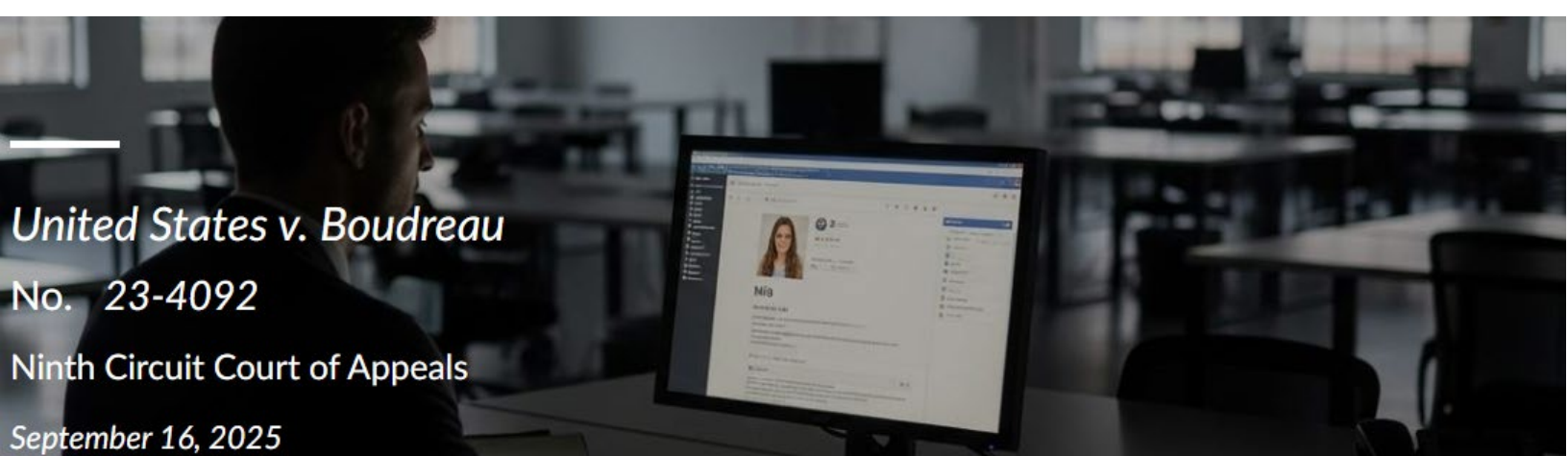
Training Takeaway

This case has several takeaways. For officers engaged in an area search for a suspect, the case suggests that hot pursuit will be less likely to apply as the minutes tick by and there is uncertainty about where the suspect went. The hot pursuit holding in this case indicates that the chase must be ongoing from the moment of the initial sighting, according to federal constitutional law.

A second takeaway is related to the use of force having been held to not be controlled by the lawfulness of a search. The lawfulness of the K-9 officer’s use of force against the dogs was upheld in this case, even though the search was held to have been unlawful.

A final cautionary note is warranted. Pursuit in Washington under current Washington statutes is likely quite different from Nevada law. Plus, the federal questions addressed by the court in this opinion do not necessarily control state law claims. All of this is to say that this case, like most federal cases, is not necessarily controlling of issues in a Washington case brought in a Washington state court that involves similar issues. For training and policy purposes, specific guidance should be sought from department legal advisors and commanders rather than take this decision at face value.

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



United States v. Boudreau

No. 23-4092

Ninth Circuit Court of Appeals

September 16, 2025

United States v. Boudreau, No. 23-4092, Ninth Circuit Court of Appeals (September 16, 2025)

Factual Background

Search warrant constitutional standards are constantly evolving and changing. Nowhere is this truer than in computer-related evidence cases. **This case involves a Montana search warrant for evidence of child enticement and child pornography.** The issue is whether there was probable cause for the secondary crime of child pornography when the crime under investigation was primarily directed at child enticement.

The case began as an undercover investigation by a child sex abuse task force detective. The detective had created undercover Facebook accounts which were designed to appear to belong to young teen and preteen girls. The defendant took the bait and began online interaction with twelve-year-old “Mia.”

The defendant’s communications with Mia led to his arranging an in-person meetup. He was arrested *en route* to the meetup while following Mia’s instructions for how to get there. He was questioned after his arrest. He admitted believing that he had been communicating with a twelve-year-old girl and to having a sexual interest in her. He also made statements about watching child pornography, but his cooperation was limited. He declined to specify the search terms he would use to access online child pornography.

The task force detective prepared a search warrant for the defendant’s residence. The affidavit described the undercover investigation and included a statement concerning the detective’s training and experience with individuals who have a “sexualized interest in children.” He included in the affidavit an opinion that evidence of both child enticement and child pornography would be found at the defendant’s residence.

The defendant was indicted on two child exploitation charges. Before trial, he moved to suppress evidence seized under the search warrant. He relied on two arguments. The first was that the search warrant affidavit did not establish probable cause for the child pornography search. And the second was that the officer had unlawfully misled the issuing magistrate by omitting facts. The trial court denied the motion, the defendant was convicted, and this appeal followed.

Analysis of the Court

The court began with the probable cause issue. Under the federal constitution, “A warrant is supported by probable cause if, based on the totality of the circumstances, the application establishes ‘a fair probability that contraband or evidence of a crime will be found in a particular place.’ ” *Boudreau Slip Opinion*, p. 9. The court noted that probable cause for child enticement was not the issue. Instead, it noted that evidence supporting probable cause for one child sex abuse crime does not necessarily establish probable cause for just any child sex abuse crime.

The court reviewed prior case law and discerned a general principle. When an affidavit rests on a conclusory opinion that evidence of a related but distinct crime would be found because there was evidence of a different crime, the affidavit may lack probable cause. “[T]he supporting affidavit focused on facts related to Boudreau’s commission of a related but distinct crime—attempted enticement of a minor. Under our precedent, this alone does not establish probable cause to search his residence for evidence of *any* crime related to a sexual interest in children.” *Boudreau Slip Opinion*, p. 12

Having made a distinction between two different child exploitation crimes, the court nevertheless upheld the search warrant. The court held, “Given the totality of circumstances presented here, we conclude that the warrant, issued to search for evidence of a crime under Montana Code §45-5-625, was supported by probable cause to believe not only that evidence of enticement would be found at Boudreau’s residence, but also evidence of child pornography.” *Boudreau Slip Opinion*, p. 14

The court also reviewed an allegation that the detective knowingly or recklessly omitted evidence that was required to be included in the search warrant affidavit. The accusation was based on the affidavit not including an acknowledgement that the communications during the undercover investigation were done via cell phone rather than from a computer.

The court side-stepped the issue by pointing out that there was probable cause to believe the defendant possessed child pornography, which meant that the precise means of communication was not material. No hearing was required to build a record on the material omission issue.

Training Takeaway

As with many issues arising from search warrants, the probable cause issue turned in part on the crimes listed in the warrant as being under investigation. The undercover investigation was related to child enticement, but the search turned up a treasure trove of evidence of child pornography. It is a cautionary takeaway that the court did not support conflating the two separate crimes merely because they both involved a “sexualized interest in children.”

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

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Cases & References

State v. Ray, No. 103509-8, Washington State Supreme Court (Sept 11, 2025)

- [Ray Slip Opinion](#).

In re Pers. Restraint of Schoenhals, No. 103672-8, Washington Supreme Court (Sept 25, 2025)

- [Schoenhals Slip Opinion](#)
- [In re Pers. Restraint of Monschke, 197 Wn.2d 305 \(2021\)](#)
- [RCW 10.95.030](#)
- [RCW 10.73.09](#)

In re Pers. Restraint of Day, No. 85705-3, Washington Court of Appeals, Division One (Sept 2, 2025)

- [Day Slip Opinion](#)
- [RCW 9.94A.730](#) and [RCW 9.95.420](#)
- [In re Pers. Restraint of Dodge, 198 Wn2d 826\(2022\).](#)

State v. Quijas, No. 86476-1, Washington Court of Appeals, Division One (Sept 8, 2025)

- [Quijas Slip Opinion](#)

Jones v. City of North Las Vegas, No. 24-3374, Ninth Circuit Court of Appeals (Sept 8, 2025)

- [Jones Slip Opinion](#)
- [United States v. Johnson, 256 F.3d 895, 905 \(9th Cir. 2001\)](#)
- [Law Enforcement Digest, April 2025](#)

United States v. Boudreau, No. 23-4092, Ninth Circuit Court of Appeals (Sept 16, 2025)

- [Boudreau Slip Opinion](#)

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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.

WA Legal Updates

For further reading, 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