November, 1994

HONOR ROLL

420th Session, Basic Law Enforcement Academy - July 7 through September 27, 1994

Best Overall:	*Deputy Brock D. Adams - Snohomish County Sheriff's Department*
Best Academic:	*Deputy Brock D. Adams - Snohomish County Sheriff's Department*
Best Firearms:	*Officer Derek V. Kammerzell - Kent Police Department*
President:	*Officer Ernie P. Lowry - Ellensburg Police Department*

****

Corrections Officer Academy - Class 199 - September 12 through October 7, 1994

Highest Overall:	*Officer Daniel R. Bly - Snohomish County Corrections*
Highest Academic:	*Officer Daniel R. Bly - Snohomish County Corrections*
	Officer Katherine M. Fisher - McNeil Island Corrections Center
	Officer Stanley K. Friese - Clallam County Corrections Facility
Highest Practical Test:	*Officer Daniel R. Bly - Snohomish County Corrections*
Highest in Mock Scenes:	*Officer Jeffrey M. Fieck - Twin Rivers Corrections Center*
Highest Defensive Tactics:	*Officer Patricia E. Anton - Pierce County Jail*

****

Corrections Officer Academy - Class 200 - September 12 through October 7, 1994

Highest Overall:	*Officer Daniel T. LaFrance - Kitsap County Jail*
Highest Academic:	*Officer Kelly Mauck - Skagit County Jail*
Highest Practical Test:	*Officer Nathaniel T. Lloyd - Clallam Bay Corrections Center*
	Officer Steven P. McDonald - Skagit County Jail
	Officer Ruben Rivera, Jr. - Cedar Creek Corrections Center
Highest in Mock Scenes:	*Officer David E. Wilson - Benton County Corrections*
	Officer Daniel T. LaFrance - Kitsap County Jail
Highest Defensive Tactics:	*Officer Kelly Mauck - Skagit County Jail*

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BRIEF NOTE FROM THE WASHINGTON STATE SUPREME COURT

MULTI-FACETED ATTACK ON BAC VERIFIER DATAMASTER MACHINES FAILS -- In State v. Wittenberger, 124 Wn.2d 467 (1994) a consolidated appeal of multiple DUI cases from district courts in Snohomish County and King County, the State Supreme Court rules 6-3 for the prosecution. In most of the cases on appeal, the district courts had suppressed BAC results on a variety of theories; however, the King and Snohomish County Superior Court judges hearing appeals in most of the cases had reversed the district courts and had reinstated DUI charges.

The majority opinion in Wittenberger holds as follows: (1) that the State's failure to retain certain maintenance and repair records for the BAC Verifier DataMaster machines did not violate the defendants' due process rights regarding preservation of evidence under the federal or state constitution; (2) that the State's failure to file a certificate of nonworking order for the machines did not require suppression of the breath test results under court rule, CrRLJ 6.13(c); (3) that the State Toxicologist's approval of DataMaster software was not arbitrary and capricious; (4) that regulations adopted by the State Toxicologist are valid under constitutional "separation of powers" and "confrontation clause" standards; (5) that admission of the DataMaster test results in these cases was supported by an adequate foundation because -- (a) the machines were in proper working order, (b) any chemicals used in the tests were correct and properly used, (c) the operators were qualified and performed the tests correctly, and (d) the results were accurate; and (6) that an unknown operator's conducting of unauthorized sample tests on a BAC Verifier DataMaster machine in some cases did not render inadmissible all later tests that were conducted before the State recertified the machine; so long as the foundation requirements noted in holding (5) were met, the unknown operator's actions were irrelevant on the admissibility question.

Result: BAC tests held admissible in all cases on appeal, cases remanded to respective King and Snohomish County District Courts for trial.

LED EDITOR'S COMMENT

The Wittenberger decision appears to be a landmark decision of general applicability on the "preservation of evidence" issue. After having previously avoided deciding whether the "due process" protection of the Washington Constitution is more demanding of the government than is the Federal Constitution on the preservation of evidence issue [See e.g. State v. Ortiz, 119 Wn.2d 294 (1992) Sept. '92 LED:06 and State v.Straka, 116 Wn.2d 859 (1991) Nov. '91 LED:04], the majority now has decided that due process protections under the federal and state constitutions are identical. Thus, the Court has chosen to follow the "due process" standard for preserving evidence set by the U.S. Supreme Court in Arizona v. Youngblood, 488 U.S. 51 (1988) Feb. '89 LED:01. The Youngblood test adopted in

Wittenberger can be summarized as follows:

Standard Re: Preserving "Material" Evidence

Even where the State has acted in good faith, the State's failure to preserve material exculpatory evidence necessitates the dismissal of the criminal charge. "Material exculpatory evidence" is evidence that: (1) possesses an exculpatory value that was apparent before it was destroyed; (2) is of such a nature that the defendant would be unable to obtain comparable evidence by other reasonably available means; (3) would be admissible or would likely lead to admissible evidence; and (4) relates to an open investigation or pending prosecution.

Standard Re: Preserving "Potentially Useful" Evidence

The State's failure to preserve evidence that is potentially useful to a criminal defendant but does not qualify as "material exculpatory evidence" necessitates the dismissal of the charge only if the State acted in bad faith.

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WASHINGTON STATE COURT OF APPEALS

DUI CORPUS DELICTI ESTABLISHED WITH EVIDENCE OF: PROXIMITY OF SUSPECT TO VEHICLE, MOTOR VEHICLE REGISTRATION, AND PASSED-OUT OCCUPANT INSIDE

State v. Sjogren, 71 Wn. App. 779 (Div. III, 1993)

Facts: (Excerpted from Court of Appeals opinion)

> On the evening of June 24, 1990, Mr. Sjogren was drinking at Rambler's Park Tavern in Yakima. He walked across the street to a friend's house and asked him if he wanted to go to Gleed; Phil Reed said yes. The men took Mr. Sjogren's pickup and ended up at Curley's Tavern in Gleed, drinking beer. Shortly after they left the tavern, the pickup was driven off the road and into a ditch.
>
> When Washington State Trooper Brian Messer arrived at the scene, the pickup had been pulled partially from the ditch with the assistance of passersby. Trooper Messer testified that as he approached, Mr. Sjogren walked up to him. The trooper asked if he knew what had happened; Mr. Sjogren responded that he was the driver. The trooper determined the pickup was registered to Mr. Sjogren. He testified that after he read Mr. Sjogren his Miranda warnings, Mr. Sjogren said: "I'm not gonna bullshit you officer I've got a hell of a buzz going and I was the driver." He then placed Mr. Sjogren in the back of his patrol car and "contacted the passenger, Mr. Reed, who was passed out in the vehicle"; he was unable to get a statement from Mr. Reed.
>
> Mr. Reed testified he and Mr. Sjogren drank a couple of beers at Curley's, then left. He took the pickup keys from Mr. Sjogren just as they were leaving the bar and he was driving when somebody pulled out in front of them, causing him to hit the

brakes and end up in the ditch. Mr. Reed testified he hit his head on the doorframe and was knocked out. He was lying, however, in the back of the crew cab and came to as the pickup was being pulled from the ditch.

Rosalie Roller was tending bar at Curley's. She testified Mr. Sjogren was "cut off" and, after she asked who was driving, she saw Mr. Reed take keys from Mr. Sjogren before they left.

Mr. Sjogren testified Mr. Reed took his keys just before they left Curley's. To the best of his recollection, he got in on the passenger side and Mr. Reed got into the driver's seat. Mr. Sjogren further testified he did not learn until the following day that Mr. Reed had been driving. But that made sense to him because he remembered seeing Mr. Reed jammed on the left side of the steering wheel near the doorframe and finding himself between the bucket seats. Mr. Sjogren testified two pickups pulled his truck from the ditch before the trooper arrived. He and the drivers of the two pickups had something to drink; and "Phil was still in the back seat of the pickup . . . I don't know how long he was out but he was not very coherent at the time . . . we just had him lay there." He remembered Trooper Messer arriving at the scene, but nothing that followed. He had been drinking since midafternoon and was "hammered".

Proceedings:

Sjogren was charged in district court with driving while intoxicated. He lost an argument that his admission/confession to the arresting officer should be suppressed under the corpus delicti rule. The district court judge found Sjogren guilty, and the Superior Court subsequently affirmed the conviction.

ISSUE AND RULING: Did the State produce sufficient independent corroborating evidence that Sjogren was the driver of the vehicle to establish the corpus delicti of the offense of DUI, thus making his statement to the police officer admissible? (ANSWER: Yes) Result: affirmance of Yakima County Superior Court order affirming Yakima County District Court DUI conviction.

ANALYSIS: (Excerpted from Court of Appeals opinion)

> The corpus delicti of most crimes requires proof only that a crime was committed by someone. It does not include the identity of the person who committed the crime. Bremerton v. Corbett, 106 Wn.2d 569 (1986) **[Nov. '86 LED:03]**. The offense of driving while intoxicated is different, in that the corpus delicti cannot be established absent proof connecting a specific intoxicated person with operation or control of a vehicle. State v. Hamrick, 19 Wn. App. 417 (1978).
>
> The confession of a person charged with a crime is not sufficient to establish the corpus delicti. For a confession to be considered at trial, there must be an independent prima facie showing of the corpus delicti. The independent evidence need not be sufficient to support a conviction or to send the case to a jury, nor must it exclude every reasonable hypothesis consistent with the defendant not driving the vehicle. In this context, "prima facie" means only evidence of sufficient circumstances which would support a logical and reasonable inference that the

defendant was driving or in actual physical control of the vehicle.

> The evidence in this case gives rise to a logical and reasonable inference that Mr. Sjogren was the driver of his pickup. He was present at the scene of the accident in close proximity to the pickup; the pickup was registered to him; and the only other person who could have been driving was passed out in the crew cab of the pickup, behind the front seats. See Bremerton at 579 **[Nov. '86 LED:03]** (There, petitioner Carr was standing near the vehicle registered to her when police arrived. Another person was in the passenger seat of Carr's vehicle, but was unable to start the car when asked to do so, although the police officer had no difficulty starting the car. Held: this evidence will support a reasonable inference Mr. Carr was the driver.).

[Some citations, one footnotes omitted]

LED EDITOR'S CROSS REFERENCE NOTE: DUI has a special corpus delicti rule which differs from the corpus delicti rule for other crimes. See the "brief notes" LED entries below at 17-21 for corpus delicti rulings in four cases involving non-DUI crimes.

SPEEDY TRIAL RULE OF CrR 3.3/STRIKER -- "DUE DILIGENCE" OF STATE IRRELEVANT WHEN DELAY BETWEEN CHARGE-FILING AND ARRAIGNMENT IS FAULT OF DEFENDANT

State v. Bryant, 74 Wn. App. 301 (Div. I, 1994)

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

> On February 21, 1989, Bryant was charged with one count of theft in the first degree. Bryant was arraigned on the charge more than a year later on May 22, 1990. Bryant filed a written objection to the date of arraignment. A pretrial hearing was conducted to determine whether Bryant's right to a speedy trial under CrR 3.3 was violated.
>
> The Superior Court denied Bryant's motion to dismiss and entered the following findings that are unchallenged on appeal:
>
> > (1) On February 21, 1989 Defendant Donald Bryant was charged with First Degree Theft by means of welfare fraud in the King County Superior Court under above-referenced cause number.
> >
> > (2) Arraignment of Defendant was set for March 2, 1989 and Defendant was sent notice of this arraignment date on February 23, 1989 to his address in Spokane.
> >
> > (3) On March 1, 1989 Defendant called the King County Prosecuting Attorney's Office and requested a continuance of the arraignment date due to snow conditions over the Pass. As a result of this phone call the arraignment date was continued to March 6, 1989 and the Defendant was so informed.

> (4) On March 6, 1989 Defendant failed to appear at the scheduled arraignment and as a result a bench warrant was issued and forwarded to the King County Sheriff's Office for the arrest of the Defendant. Upon receipt of this bench warrant, the King County Sheriff's Office forwarded the warrant to Spokane County where the Defendant resided.
>
> (5) The King County Prosecuting Attorney and the King County Sheriff's Office were aware of Mr. Bryant's address in Spokane County at the time of the original arraignment date.
>
> (6) It is unknown what steps, if any, were taken by the Spokane County Sheriff's Office with reference to the bench warrant.
>
> (7) The Defendant was subsequently arrested on May 19, 1990 and was arraigned on this charge on May 22, 1990. At arraignment Mr. Bryant filed an objection to the date of arraignment.

The court concluded that since Bryant

> had full knowledge of the charges and the new arraignment date, he bears sole responsibility for the delay between the filing of the charges and the date of arraignment resulting from his failure to appear for the arraignment.

A stipulated trial was conducted. Bryant was convicted as charged and a standard range sentence was imposed.

ISSUE AND RULING: Under speedy trial rule CrR 3.3, if defendant's fault causes a delay in the holding of an arraignment, does it matter that the State cannot show "due diligence" in bringing about a speedy arraignment and trial? (ANSWER: No) Result: affirmance of King County Superior Court conviction for first degree theft by welfare fraud.

ANALYSIS: (Excerpted from Court of Appeals opinion)

> CrR 3.3 provides that defendants who are not detained in jail or subject to conditions of release pending arraignment "shall be arraigned not later than 14 days after that appearance in superior court which next follows the filing of the information or indictment." CrR 3.3(c)(1). The rule further provides that defendants who remain out of custody must be brought to trial no later than 90 days after their arraignment. CrR 3.3(c)(1). As noted in State v. Greenwood, 120 Wn.2d [585 (1993)] at 590, application of this rule becomes difficult
>
> > [i]f individuals are not informed in a timely manner that they have become criminal defendants, and not directed to appear in court to answer for the charge, a long delay could occur before they ever make their first appearance in court. CrR 3.3 addresses the problem of untimely *arraignments*, but it does not address the problem of long and unnecessary delays in initially bringing defendants before the court.

In order to address this problem, the Supreme Court **[in Greenwood]** held that when a long delay occurs between the filing of an information and the defendant's arraignment the Striker rule applies. [State v. Striker, 87 Wn.2d 870 (1976)]. Under Striker, when there is an unnecessary delay between the filing of an information and the defendant's arraignment, a constructive arraignment date 14 days after the filing of the information is established. The time for trial commences on the constructive arraignment date.

In the case at bar, the parties agree that the delay between the filing of the information against Bryant and his arraignment was sufficiently lengthy to warrant consideration of the Striker rule. The parties disagree as to whether the delay should be excluded from Bryant's speedy trial calculation.

Only unnecessary delay will result in the application of the Striker rule. If the State acts in good faith and with due diligence in attempting to bring the defendant before the court for arraignment, the delay will be considered unavoidable and a constructive arraignment date will not be set. Likewise, any delay caused by the defendant's fault or connivance is excluded from the defendant's time for trial calculations under the Striker rule.

Bryant argues that the Superior Court erred in concluding that the delay between filing and arraignment was Bryant's fault, "thereby implicitly excusing the State from exercising good faith and due diligence in attempting to find" him. Bryant contends that the State failed to pursue "the most obvious lead available to it: 'Mr. Bryant's actual, correct address'". He complains that the prosecutor's office failed to mail a second notice informing him of the rescheduled arraignment date and that the office made no effort whatsoever to follow up on the warrant until after he had already been booked into the King County Jail. This argument is not persuasive.

As noted above, this appeal was stayed pending our Supreme Court's decision in State v. Greenwood. In Greenwood, the court clearly stated that

> the court will not establish a constructive arraignment date if the delay was caused by any fault or connivance on the defendant's part, or if the prosecution acted in good faith and with due diligence in attempting to bring the defendant before the court.

[Court's emphasis]

The unchallenged findings of the Superior Court, which are verities in this appeal, are that Bryant was given notice of his first arraignment date, he called the prosecutor's office to reschedule his arraignment and he was informed of the new date. Under these circumstances, the State was entitled to assume that Bryant was well aware of his arraignment date and that his failure to appear was volitional. Accordingly, it is fair to conclude, as the trial court did, that the delay in arraigning Bryant was due to his own fault. Under the authority of Greenwood, Bryant's fault vitiates any inquiry into whether the State acted in good faith and with due diligence in attempting to bring Bryant before the court.

> We recognize that our analysis in the case at bar may appear to represent a departure from the analysis we employed when faced with similar facts in Seattle v. Henderson, 67 Wn. App. 369 (1992). In Henderson, the defendant was aware of his arraignment date, but failed to appear. While we ascribed the first 7 months of subsequent delay to the defendant, information later acquired by the State caused us to inquire whether the State had exercised good faith and due diligence once the information was received. We concluded that the State had.
>
> Henderson was decided without the benefit of State v. Greenwood, supra. Given the Supreme Court's clear statement that a constructive arraignment date will not be established if the delay in arraignment resulted from the defendant's fault or connivance or the State acted in good faith and with due diligence in attempting to bring the defendant before the court, we conclude that the due diligence inquiry in Henderson was superfluous. The finding that the initial delay resulted from the Defendant's fault was sufficient to resolve the issue.

[Some citations omitted]

LED EDITOR'S CROSS REFERENCE NOTE: See the "brief notes" LED entries below at 11-17 for: (i) three other recent cases under the Striker speedy trial rule of CrR 3.3; and (ii) two other recent cases involving other kinds of speedy trial questions.

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BRIEF NOTES FROM THE WASHINGTON STATE COURT OF APPEALS

(1) **10-DAY EXECUTION RULE OF THOMAS APPLIES TO BOTH DISTRICT COURT AND SUPERIOR COURT SEARCH WARRANTS --** In State v. Wallway, 72 Wn. App. 407 (Div. II, 1994) the Court of Appeals rejects two defendants' arguments that police did not timely execute district court-issued search warrants under which their respective residences were searched. The Court of Appeals rejects the argument of the defendants under the following analysis:

> Initially, Wallway and Hoinowski contend that the search was invalid because the warrant was not executed in a timely fashion. They argue that under RCW 69.50.509 a warrant is to be executed and returned within 3 days of issuance. We disagree. In State v. Thomas, 121 Wn.2d 504 (1993)**[Aug. '93 LED:22]**, a defendant charged with possession of a controlled substance with intent to deliver challenged the timeliness of a search warrant that was executed 9 days after it was issued. Thomas argued, as Wallway and Hoinowski do, that RCW 69.50.509 requires a warrant to be executed and returned within 3 days of the date it was issued. In holding that the warrant was executed in a timely fashion, the Washington Supreme Court opined that CrR 2.3 controls the time period for *execution* of a warrant whereas RCW 69.50.509 establishes the time period for *return* of a warrant after execution.
>
> Although Thomas dealt with CrR 2.3 **[the Superior Court rule -- LED Ed.]**, rather than CrRLJ 2.3 **[the rule for courts of limited jurisdiction -- LED Ed.]**, we are satisfied that the reasoning of Thomas applies equally well in the CrRLJ 2.3

context because the relevant language of CrRLJ 2.3 and CrR 2.3 is virtually identical. CrRLJ 2.3(c) provides in pertinent part:

> The warrant shall command the officer to search, within a specified period of time not to exceed 10 days . . ..

In light of Thomas, we are satisfied that the warrant was served in a timely fashion, it being undisputed that the search pursuant to the warrant took place within 10 days of its issuance and that the return on the warrant was made within 3 days of its execution.

[Footnotes, some citations omitted]

Result: Clark County Superior Court convictions against Donald Ray Wallway and Daniel Hoinowski for unlawful manufacture of a controlled substance affirmed.

(2) **TRIAL COURT PUT EXCESSIVE BURDEN OF PROOF ON GOVERNMENT IN VEHICLE FORFEITURE CASE UNDER RCW 69.50.505** -- In Cruz v. Grant County Sheriff's Office, 74 Wn. App. 490 (Div. III, 1994) the Court of Appeals agrees with appellant, Grant County, that the trial court erred in a vehicle forfeiture case governed by RCW 69.50.505.

The trial court judge had mistakenly believed that in order to support its forfeiture case the County was required to prove something beyond probable cause to believe the vehicle had been used in illegal drug activity. The Court of Appeals disagrees. The government need not prove the vehicle's drug connection by a preponderance of the evidence, as the trial court appeared to believe. The statute and case law are clear, the Court of Appeals declares. Once the government establishes probable cause (which can be based entirely on hearsay), then the vehicle owner (Jose Alfredo Cruz in this case) claiming the vehicle must prove by a preponderance of the evidence that the vehicle either: (1) was not being so used, or (2) was being used without the owner's consent or knowledge.

Result: reversal of Grant County Superior Court order denying forfeiture on one of two seized vehicles; case remanded to Superior Court for further proceedings.

(3) **PC TO ARREST FOR DUI, BUT PBT TESTIMONY GIVEN NO WEIGHT** -- In Bokor v. DOL, 74 Wn. App. 523 (Div. III, 1994) the Court of Appeals agrees with DOL's argument in this implied consent case that the trial court erred in ruling that Bokor was arrested unlawfully for DUI. Bokor had claimed that the arresting officer lacked probable cause to arrest him for DUI, and the trial court had erroneously agreed.

The Court of Appeals declares as follows that there was ample evidence that the arresting officer had PC for a DUI arrest:

> Trooper Wiley testified Mr. Bokor admitted he had been driving the car, the trooper detected the odor of intoxicants on Mr. Bokor's breath, Mr. Bokor repeatedly swayed during the interview and performed the field sobriety test very badly. The trooper was aware Mr. Bokor had a bad leg and nevertheless determined Mr. Bokor was highly intoxicated. This testimony was uncontradicted; Mr. Bokor testified he had in fact been drinking. The uncontroverted testimony establishes

the existence of probable cause for the arrest.

However, the Court of Appeals does affirm the trial court's decision not to consider the officer's testimony about use in the field of a PBT device. The Court of Appeals explains as follows its view that, under the record made in this case, an insufficient foundation was laid for admission of the officer's testimony about the PBT device:

> An officer cannot reasonably rely on data obtained from a technical device unless he has some understanding of how it works or assurances of its reliability from an expert knowledgeable about the underlying principles on which the device is based, and a reasonable basis for believing the device will produce reasonably reliable results under the circumstances in which it is used, including adequate maintenance and correct operation. . . .
>
> The State presented no evidence which would permit the trier of fact to conclude the trooper reasonably relied on the results of the portable testing device. Nor has the State cited any authority for the admissibility of such tests. The sole evidence of reliability was that of the trooper who testified the device had given comparable results to a BAC in the past. There is no evidence past performance would be a reliable predictor of correct results in the present case. There was no evidence the trooper had any training or expertise in statistical analysis. The trial court quite properly gave this evidence no weight in determining whether the trooper had probable cause to believe Mr. Bokor was intoxicated.

Result: Reversal of Spokane County Superior Court order which had reversed drivers' license revocation; arrest held based on PC and license therefore properly revoked.

(4) **CrR 3.3/STRIKER SPEEDY TRIAL RULE'S "DUE DILIGENCE" REQUIREMENT MET WITH MAILING OF NOTICE OF ARRAIGNMENT** -- In State v. Hunsaker, 74 Wn. App. 209 (Div. I, 1994) the Court of Appeals rejects defendant's claim that his speedy trial rights under Criminal Rule (CrR) 3.3 were violated.

Defendant had given police a Seattle address prior to charges being filed. The prosecutor mailed the notice of arraignment to that address, and the notice did not come back as undeliverable. The defendant had moved and made a forwarding request to postal authorities; the Court asserts that it was reasonable for the prosecutor to assume that the un-returned notice was properly forwarded. In addition, police had gone to the Seattle address to look for defendant following the mailing of the notice, but had found no one at home.

The Court's analysis is as follows:

> CrR 3.3 provides limitations which must be followed to ensure that criminal defendants are brought to trial in a speedy manner. CrR 3.3 could be violated if there is a long and unnecessary delay in bringing a defendant who is amenable to process before the court to answer a charge. State v. Striker, 87 Wn.2d 870 (1976). Under Striker, if there is an unduly long delay between filing charges and arraignment, the start of the speedy trial time is to be calculated from the filing of the information rather than arraignment.

> Striker does not require the court to establish a constructive arraignment date in cases where the prosecutor acts with good faith and due diligence in attempting to bring the defendant before the court to answer the charge. State v. Greenwood, 120 Wn.2d 585 (1993). Whether the prosecution acted in good faith and with due diligence necessarily turns on the facts of each individual case.
>
> In Greenwood, the prosecution knew the defendant's attorney but did not notify him of defendant's arraignment. The court held that sending notice to the defendant's last known address, from which he had moved, was sufficient to constitute due diligence. *See also* State v. Miffit, 56 Wn. App. 786 (mailing notice of arraignment to last known address of defendant constituted due diligence, even though defendant was incarcerated in the state at the time of the mailing) . . ..
>
> We hold that where the prosecution mails the notice of arraignment to an address given it by the defendant, and the notice is not returned, the reasonable inference is that the defendant has received the notice and the prosecution has therefore acted with due diligence. Therefore, the delay in arraignment is exempt from the speedy trial calculations.

Result: King County Superior Court conviction for child molesting affirmed.

LED EDITOR'S NOTE:

Because the Court of Appeals found "due diligence and good faith" by the State, the Court declines to address two alternative theories which would each independently defeat defendant's Striker challenge. The first of those theories was that because Hunsaker had gone out of state, he was during that time not "amenable to process" from the Washington courts. The second theory was that if Hunsaker's act of giving the police an old address was found by the trial court to be a connivance, then the Striker exceptions for "delay . . . due in part to defendant's own fault and connivance". . .. See State v. Carpenter, 94 Wn.2d 690 (1980).

(5) **MAILING OF ARRAIGNMENT NOTICE ESTABLISHES REBUTTABLE PRESUMPTION OF NOTICE UNDER SPEEDY TRIAL RULE OF CrR 3.3/STRIKER** -- In State v. Kitchen, 75 Wn. App. 295 (Div. I, 1994) the Court of Appeals reviews a trial court's ruling on a speedy trial issue. The trial court had failed to make findings on the factual questions of: (1) whether defendant had received notice of his arraignment (the state had proved that notice was mailed by first class mail to defendant's then-current address); and (2) if so, whether defendant was at fault for failing to appear at the scheduled arraignment.

The Striker speedy trial rule under CrR 3.3 does not look at the State's "due diligence" in bringing defendant to trial if defendant: (1) receives notice of the arraignment, and (2) has no good excuse for failing to appear at that arraignment. Although the Court's opinion is a bit unclear, Kitchen seems to say that if the State proves that it mailed the arraignment notice to defendant, as it did here, defendant cannot put the State to the proof of "due diligence" by simply claiming he did not receive the notice. Proof of the fact of mailing to the correct address creates a rebuttable presumption that the notice was received, the Court declares. In that circumstance, defendant must come up with evidence beyond his bare denial of receipt in order to convince the trial court

that he did not receive the notice, the Court implies. If defendant cannot come up with such evidence, then he is presumed to have had notice, and he then must then prove he had a good excuse for not showing at the arraignment.

Result: case remanded to Aukeen District Court of King County for hearing to determine whether defendant received his arraignment notice and, if so, whether he had a good reason for not appearing at the arraignment.

(6) **SPEEDY TRIAL RULE OF CrR 3.3/STRIKER NOT SATISFIED WHERE SUMMONS SENT BY CERTIFIED LETTER AND LETTER RETURNED UNCLAIMED** -- In State v. Williams, 74 Wn. App. 600 (Div. I, 1994) the Court of Appeals rules that the State failed to exercise due diligence in attempting to obtain the presence of defendant, Williams, whose arraignment had been delayed.

Following the filing of charges for first degree theft in 1988, the State tried to serve a summons on him informing him of an arraignment date. The State had sent a certified letter containing a summons to defendant's address. The summons was returned "unclaimed" for reasons unknown; defendant was not aware of the sending of the summons.

The events which occurred thereafter are described by the Court of Appeals as follows:

> When Williams did not appear for the arraignment, a bench warrant was issued for his arrest on August 11, 1988. The prosecutor's office notified the Employment Security Department (ESD) about the warrant as follows:
>
> > Please be sure that the warrant has been entered on the computer. Then, if possible, please try to locate and arrest the defendant as soon as possible. *In light of recent cases indicating the need for due diligence* in finding felony defendants, please document your efforts carefully.
>
> [Court's emphasis] Despite this warning, there was no action taken by ESD, the prosecutor, or any police agency to attempt to contact Williams further on this matter or to serve the arrest warrant. This was so despite the fact that Williams' residential address remained the same and was a matter of public record; he had a telephone at the house which was listed in the telephone book; his driver's license listed his proper home address; his cars were registered at that address; he had been stopped by police for traffic infractions at least three times while the warrant was outstanding; police had been called to his home on two separate domestic disturbance calls; and his wife was arrested at the home location while he was there.
>
> Additionally, in 1990, Williams filed for bankruptcy and on the bankruptcy schedules listed the ESD "overpayment" as a debt, thus specifically naming ESD as a creditor. As a creditor, ESD received copies of the bankruptcy schedules and notices of all hearings. Notwithstanding these notices, no action was taken to locate or notify Williams.
>
> Williams was arrested on March 30, 1992, when he misplaced his wallet in a store. The officer who was called to assist in the lost wallet investigation did a warrant check and discovered the outstanding warrant.

> Williams objected to the timeliness of his arraignment and trial setting. The trial court dismissed the action concluding that the 3 1/2-year delay between the filing of the information and the arraignment was unreasonable and excessive. The court found that although the State initially exercised due diligence in sending the certified letter containing the summons, once it was returned unclaimed the State had a continuing duty to attempt to notify or locate Williams, or make some good faith and diligent attempts. The court found this was especially true after 1990, when ESD received at least two notices from the Bankruptcy Court regarding the very debt that was the subject of the charge. Considering the plethora of facts before the court in Williams' favor, the court determined that he overcame any initial "good faith and due diligence' by the State.

Result: affirmance of Snohomish County Superior Court order dismissing theft charges for speedy trial violation.

(7) **CONSTITUTIONAL SPEEDY TRIAL REQUIREMENT NOT VIOLATED WHERE OUT-OF-STATE PRISONER NOT TRANSPORTED FOR TRIAL FOR SEVERAL YEARS** -- In State v. Davis, 69 Wn. App. 634 (Div. I, 1993), the Court of Appeals reviews the issue of whether defendant's constitutional speedy trial rights were violated where there was delay in bringing him from out-of-state to try him. **[NOTE: the constitutional speedy trial standard is very different from the speedy trial standard under CrR 3.3 -- see three preceding LED entries beginning at 11 and the Bryant entry at 6 above.]** The essential chronology of the case is as follows:

9/14/87 - Robert Davis robs a bank in Snohomish, Washington
9/17/87 - Robert Davis arrested in Montana for robbery there
9/17/87 - Snohomish County Prosecutor's Office files robbery charges for 9/14/87 robbery in City of Snohomish, requests extradition waiver in writing to Montana officials; there is no reply
Spring 1988 - Davis pleads guilty and is sentenced to Montana prison for in excess of 10 years
12/01/88 - Snohomish County prosecutor writes to Montana officials to request notification of release of Davis
3/19/91 - Davis writes to Snohomish County prosecutor demanding final disposition of all charges against him
6/05/91 - After being transported from Montana, Davis is arraigned in Snohomish County Superior Court and trial date is set for 7/19/91; Davis objects on speedy trial grounds
October, 1991 - Snohomish County Superior Court denies defendant's speedy trial motion and thereafter accepts his guilty plea, preserving his right to appeal the speedy trial issue

The Court of Appeals' analysis of the constitutional speedy trial issue on these facts is as follows:

> Because it is impossible to determine precisely when an accused's constitutional speedy trial right has been denied, the United States Supreme Court has created a balancing test, necessitating a case-by-case approach. The factors are: (1) the length of the delay; (2) the reason for the delay; (3) the defendant's assertion of his speedy trial right; and (4) the prejudice to the defendant.

The first two factors . . . are somewhat in Davis' favor. Over 4 years elapsed between the filing of the information (September 17, 1987) and the trial (October 18, 1991), about a year of which was taken up by proceedings in Montana. The State did not receive Davis' request for disposition of the charges against him until March 27, 1991. At issue here are the 29 months between October 1988 (when Snohomish County learned of his incarceration in Montana) and March 1991. We find this delay long enough to presumptively affect Davis' speedy trial rights.

As to the reason for the delay, the State has conceded that it was not diligent in obtaining Davis' presence. [W]hile a deliberate attempt to delay a trial to hamper the defense should be weighted heavily against the government, a "more neutral reason such as negligence of overcrowded courts should be weighted less heavily . . .". In the present case, there is not evidence or allegation of any intention to hamper the defense, and thus we do not grant this factor heightened weight.

In contrast to the first and second factors, we find that the third and fourth factors are decidedly in the State's favor, especially the fact that Davis failed to assert his speedy trial right. Though a defendant need not demand a speedy trial, he is not thereby absolved of all speedy trial responsibilities. In the present case, Snohomish County asked that Montana place a "hold" on Davis upon his release. Montana law, like Washington's, requires that the warden promptly inform a prisoner of any detainer lodged against him, and inform him of his right to make a request for final disposition of the indictment. Mont. Code Ann. § 46-31-101 art. 3(3). With no authority in the record to the contrary, we presume the Montana warden followed Montana law and informed Davis of his rights under the IAD. Davis' failure to request a speedy trial is a factor we weigh strongly in the State's favor.

With respect to the fourth factor, prejudice, the [Supreme Court has] identified three interests a speedy trial is designed to protect:

> (i) to prevent oppressive pretrial incarceration; (ii) to minimize anxiety and concern of the accused; and (iii) to limit the possibility that the defense will be impaired. Of these, the most serious is the last, because the inability of a defendant adequately to prepare his case skews the fairness of the entire system.

Prejudice is not limited to the prejudice a defendant may suffer at his trial. . . .

We find that Davis suffered no prejudice . . .. Pretrial incarceration was not oppressive because Davis was already incarcerated in Montana under a different charge. Davis demonstrated no "anxiety and concern" resulting from Washington's charges. And most importantly, Davis failed to show that his defense was impaired. Thus, in light of Davis' inability to show prejudice and his failure to express any interest in a speedy trial, we find Davis' Sixth Amendment speedy trial rights were not infringed.

Result: Snohomish County Superior Court judgment on defendant's plea of guilty to first degree robbery affirmed.

(8) **STATE PRISONER'S WRITTEN REQUEST TO WARDEN THAT COUNTY PROSECUTOR PROCEED ON PENDING INFORMATION FOR DIFFERENT CRIME TRIGGERS SPECIAL 120-DAY "SPEEDY TRIAL" RULE UNDER RCW 9.98.010** -- In State v. Morris, 74 Wn. App. 293 (Div. III, 1994) the Court of Appeals rules 2-1 that the time ran out for the State to prosecute defendant under the special speedy trial provisions of chapter 9.98 RCW, Washington's intra-state detainer law.

Defendant Morris was in Walla Walla state penitentiary for convictions on certain crimes when he wrote to the warden that he wanted speedy disposition of a pending charge for an unrelated Spokane County crime. Two-and-a-half weeks later, the warden delivered to the Spokane County prosecutor Morris' written request for speedy trial under RCW 9.98.010. An arraignment was held and a trial scheduled. Thereafter, Morris raised the question under RCW 9.98.010 whether the 120-day period for speedy trial under that statute already had elapsed without trial such that the charges should be dismissed. The two-plus weeks that the warden held the request before forwarding it to the prosecutor was the focus of the case, because the trial did not commence within 120 days of Morris' delivery of his request to the warden, but did commence within 120 days of the warden's forwarding of the request to the prosecutor.

At issue was the following language in RCW 9.98.010:

> Whenever a person has entered upon a term of imprisonment in a penal or correctional institution of this state, and whenever during the continuance of the term of imprisonment there is pending in this state any untried indictment, information or complaint against the prisoner, he *shall be brought to trial within one hundred twenty days after he shall have caused to be delivered to the prosecuting attorney and the superior court* of the county in which the indictment, information or complaint is pending written notice of the place of his imprisonment and his request for a final disposition to be made of the indictment, information or complaint . . .

[Emphasis by Court]

The case came down to the question of when Morris had "caused to be delivered" to the prosecutor the request. If Morris' delivery of his written request to the warden started the 120-day period (MORRIS' POSITION), then the statute was violated, but if the speedy trial period did not start until the prosecutor actually received the request (THE STATE'S POSITION), then the statute was not violated. The Court of Appeals opts for Morris' position, quoting from a dissenting opinion in a U.S. Supreme Court case as follows:

> The focus is on the prisoner's act, and that act is complete when he transmits his request to the warden. That is the last time at which the inmate can be said to have done anything to "have caused to be delivered" the request. Any other reading renders the words "he shall have caused" superfluous.

Result: affirmance of Spokane County Superior Court order dismissing charges.

(9) **CORPUS DELICTI ESTABLISHED FOR CRIME OF POSSESSING CONTROLLED SUBSTANCES** -- In State v. Solomon, 73 Wn. App. 724 (Div. I, 1994) the Court of Appeals rejects defendant's corpus delicti argument. "Corpus delicti" is a latin term of law which means

"body of the crime" -- the rule requires that the certain elements of a crime be proven before a person's admissions or confessions as to that crime can be admitted into evidence.

During police execution of a search warrant, defendant Solomon had admitted to the officers that he was the owner of cocaine found in a residence. At trial, he sought to exclude his previously volunteered admissions; the Court of Appeals describes his argument for a special corpus delicti rule as follows:

> Solomon contends that the State failed to present prima facie proof that he, in particular, possessed the cocaine found in the apartment. Specifically, Solomon argues that the crime of possession of cocaine is analogous to those crimes where the identity of the accused is included as an element of the corpus delicti. **[LED Ed: Here, the Court cites Bremerton v. Corbett, 106 Wn.2d 569 (1986) Nov. '86 LED:03, the leading case on the special DUI corpus delicti rule.]** Thus, in this case, because there was no independent evidence showing that he, in particular, possessed the cocaine, Solomon contends that the elements of the corpus delicti were not established.

[Some citations omitted]

The Court rejects defendant's theory under the following analysis:

> While the State must always prove the identity of the accused, proof of the identity of the person who committed the crime is not an element of the corpus delicti. Rather, to establish the corpus delicti, the State need only offer proof that *someone* committed the crime. . . .
>
> As an exception to this rule, Washington courts have recognized that there are certain crimes where the identity of a particular person must be established as past of the corpus delicti (e.g., reckless or drunken driving, attempt, conspiracy, perjury). Those crimes, however, inherently require proof of identity; the fact that a crime occurred cannot be established without the identification of a particular person. Possession of a controlled substance is not a crime of that nature. Rather, in a possession case, it is clear that a crime occurred if drugs are in the possession of someone; identity is not essential to establish the fact that a crime occurred. A defendant may satisfy a jury at trial that the drugs did not belong to him, but that issue is separate from the initial question of whether the body of the crime has been established. Thus, contrary to Solomon's contention, the State did not need to present independent proof that Solomon, in particular, possessed the cocaine.
>
> Applying this analysis to the facts of the case, the evidence showed that a quantity of cocaine was discovered in the bedroom of an inhabited apartment. The evidence therefore supports a logical and reasonable deduction that someone possessed a controlled substance. We therefore hold that the trial court did not err in finding that the State presented prima facie proof, independent of Solomon's extrajudicial admissions, which established the corpus delicti of the crime of possession of a controlled substance.

[Citations, footnotes omitted]

Result: King County Superior Court conviction for possession of a controlled substance affirmed.

LED EDITOR'S COMMENT:

The discussion by the Court excerpted above would appear to support a defendant's corpus delicti argument where drugs have been found lying on the street, rather than, as here, located in an obviously occupied residence. While it seems silly, police may need to prove someone was in possession of drugs found in an outside area before an admission as to ownership of those drugs can be admitted into evidence. Such evidence might include: (1) police observation of suspect's drop, (2) witnesses' observations, (3) fingerprints on bindles, etc.

(10) **CORPUS DELICTI FOR MURDER ESTABLISHED BY STATE IN CASE OF MISSING BODY** -- In State v. Thompson, 73 Wn. App. 654 (Div. I, 1994) the Court of Appeals rejects defendant's corpus delicti argument. Drew Thompson had been arrested after he was caught using the victim's car and AIM card, even though she apparently had not ever been an acquaintance of his. He was charged with first degree murder. While in jail awaiting trial, he had made admissions to a fellow inmate. He allegedly told the inmate that he had threatened the victim, Bartschot, in order to get her access card and PIN number. Thompson also told the inmate that he had disposed of Bartschot's body so that police would never find it. Bartschot's body was never found, and at trial defendant objected that the corpus delicti of murder could not be established without better evidence that Bartschot had really died by criminal means. The Court of Appeals first defines the corpus delicti standard as follows:

> To establish the corpus delicti of murder, the State must show (1) the fact of death and (2) a causal connection between the death and a criminal agency. The State need not show a causal connection between the defendant and the crime and can rely entirely on circumstantial evidence to establish the elements of the corpus delicti.

[Citations omitted]

After addressing other evidentiary issues, the court explains why it concludes that the corpus delicti was established by the circumstantial evidence about victim Bartschot's habits and character:

> Here, the State provided ample evidence to establish prima facie that Bartschot had died and that there was a causal connection between her death and a criminal agency. . . . [T]he evidence of Bartschot's habits was admissible. This evidence showed that Bartschot never missed appointments without informing the affected parties, she never had been gone for more than a 24-hour period, she was a good housekeeper, she let people know where she was, she did not have any dangerous habits, she had prepared for the upcoming fall quarter and had made plans to remodel her mother's house, she took excellent care of her pets, and her physical and psychological health was good.
>
> In contrast to the above evidence, there was evidence that Bartschot, after making

several appointments and having numerous obligations to fulfill, disappeared without telling anyone, that a moldy coffeepot and dirty dishes were found in her house, and that her cat was left for days without food and water. When all this evidence is viewed together, a strong inference is raised that Bartschot died and that her death was sudden and caused by criminal means. This conclusion is further supported by the bloodstains in Bartschot's car and the evidence that Thompson had been using her car and her AIM card. We conclude that the State introduced sufficient evidence to show the corpus delicti of the crime.

Result: King County Superior Court conviction for first degree murder affirmed.

(11) **ADMISSIBLE CHILD HEARSAY RE: GENITAL PAIN PROVIDES CORPUS DELICTI FOR CONFESSION IN RAPE CASE** -- In State v. Biles, 73 Wn. App. 281 (Div. III, 1994) the Court of Appeals rejects defendant's challenge on corpus delicti grounds to admission of his confession to a police officer that he had digitally penetrated his 4-year-old daughter's sex organ. The Court of Appeals explains, as follows, that the child's hearsay statement to a CPS caseworker provided the corpus delicti for admission of Biles' confession:

> The courts have long held that a confession alone is not sufficient to establish the corpus delicti of a crime unless it is corroborated by independent proof. . . .
>
> The independent proof need not establish the corpus delicti beyond a reasonable doubt, or even by a preponderance of the evidence; it need only support a logical and reasonable inference that the crime occurred. . . .
>
> The courts have found that complaints of genital pain during sexual contact are sufficient corroborating evidence of sexual abuse. . . .
>
> In this case, the parties have stipulated that Mr. Biles made the following statements in response to the following questions:
>
> > [OFFICER] KERNAN: OK. Did you penetrate her, Robert?
> > ROBERT: Well, from what they qualify as penetrating, just, you know, going, just barely into, just skimmed (inaudible), I would say that . . .
> > . . .
> > KERNAN: And was there penetration on each, each time?
> > ROBERT: No. Not every time.
>
> The corroboration of Mr. Biles' admissions comes from child hearsay testimony which was admitted pursuant to RCW 9A.44.120. Mr. Biles does not contest the admissibility of this [child hearsay] evidence. Ms. Monek was allowed to testify regarding the child's out-of-court statements as follows:
>
> > Q: What did she tell you that her father had done to her?
> > A: At that time she told me that daddy had touched her pee pee with his pee pee. And I did some specific questioning about how it felt and she said he hurt her. She described the male genital organ. When I asked her if it felt hard or soft she said it was hard. I asked her how it felt after and she said it was wet.

Q: Did she say anything about penetration?
A: She indicated that it hurt her and she cried.

> The child's hearsay statements, given through Ms. Monek, are sufficient to corroborate Mr. Biles' confession. They support the logical and reasonable inference that penetration occurred; hence, there was sufficient evidence of the corpus delicti.

[Citations omitted]

Result: Grant County Superior Court conviction of first degree rape of a child affirmed (another conviction, for first degree child molestation, was not appealed).

(12) **CORPUS DELICTI FOR ADMISSIBILITY OF CHILD-RAPE CONFESSION ESTABLISHED THROUGH DEFENDANT'S OWN TRIAL TESTIMONY** -- In State v. Mathis, 73 Wn. App. 341 (Div. II, 1994) the Court of Appeals rejects defendant's corpus delicti challenge to the admissibility of his confession to police regarding sexual contacts with the 14-year-old victim. Defendant had taken the witness stand at his trial for third degree rape of a child and had admitted on the stand that he had previously admitted to police his digital penetration of the victim's sex organ. Defendant's own testimony, coupled with the victim's testimony, was sufficient, the Court of Appeals explains:

> While Mathis is correct in stating that the corpus delicti may not be established solely based on an accused's confession, we believe that there was sufficient evidence, independent of Mathis's statements to the police, to prima facie establish the corpus delicti of the crime charged in count 1 of the information. Significantly, during his case in chief, Mathis testified and confirmed that he had made statements to Morton police officers in which he admitted that he had digitally penetrated L.P. on April 19, 1991. That evidence, combined with the testimony of L.P. that Mathis kissed her, put his hands down her underpants, and allowed her to sleep overnight at his house on April 19, was sufficient to establish the corpus delicti of the crime, independent of the officers' testimony concerning Mathis's statements made to them. We recognize that ordinarily, a trial court would not have the defendant's testimony before it when determining if the corpus delicti of the crime had been established, since a motion to dismiss is normally raised at the close of the State's case in chief. Mathis, however, did not, as we have noted, assail the sufficiency of the evidence until after he had testified. Indeed, he did not raise the issue until the jury was deliberating on a verdict. It was, therefore, appropriate for the trial court to consider all of the evidence that was before it in determining if the corpus delicti of the crime was established.

Result: Lewis County Superior Court convictions for third degree rape of a child (two counts) affirmed.

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MALICIOUS PROSECUTION UPDATE

OFFICERS SETTLE MALICIOUS PROSECUTION APPEAL

LED EDITOR'S NOTE: The following article is an update on a January 1994 LED article. Like the earlier article, this update was authored by Detective Chris Hurst of the Black Diamond Police Department. LED readers may contact Detective Hurst or Chief Rick Luther at the Black Diamond Police Department, 25510 Lawson Street, Black Diamond, WA 98010.

TO: John Wasberg, Attorney General's Office, Seattle
FROM: Detective Chris Hurst, Black Diamond Police
SUBJECT: Update on Anderson Case

In the January '94 LED at 20-21, the LED presented an article regarding a counterclaim for malicious prosecution brought by Chief Rick Luther and Detective Chris Hurst of the Black Diamond Police Department against Gerald Anderson. Anderson had filed a malicious and vexatious lawsuit personally against the officers, after his son had been arrested for the delivery of four ounces of cocaine. The lawsuit against Luther and Hurst was dismissed by the court as being frivolous in nature. Luther and Hurst were afforded a jury trial on their counterclaim of malicious prosecution. In October of 1993, a King County Superior Court jury found in their favor and awarded them $221,945.00.

Anderson appealed the case to the Washington Court of Appeals. Appellate specialist, Malcolm Edwards, was retained by Anderson to represent him on appeal. Luther and Hurst added their own appellate specialist, Philip Talmadge, to their trial team. Luther and Hurst received offers from numerous parties -- including the Washington State Police Officers Association, State Association of Prosecuting Attorneys, Washington Association of Sheriffs and Police Chiefs, the Washington State Troopers Association and numerous police guilds from around the State of Washington -- to join them with friend-of-the-court briefs. As the matter approached the deadline for opening briefs to be filed in the Court of Appeals, Anderson decided to abandon the appeal, and he paid a settlement. Anderson has made a claim against his original attorney for malpractice.

Although this case is now settled, other frivolous lawsuits against other police officers around the State of Washington have been dropped, due in part to the result obtained by the Black Diamond officers. While this case did not result in a published appellate court opinion, and therefore does not establish a formal precedent, the long term effect of this case should be a chilling effect on attorneys and individuals who have been abusing the justice system by filing unfounded lawsuits against individual officers. Since the October 1993 verdict, the trial attorney for Luther and Hurst, Susan Rae Sampson, of Sampson and Wilson in Renton, has taken on several more malicious prosecution counterclaims for Washington peace officers. Luther and Hurst wish to thank the officers, prosecutors, and police administrators who offered to join them on appeal as amicus curiae.

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NEXT MONTH

The December LED will include, among other entries, the annual subject matter index, and an entry on State v. Chapin (Christopher Jon), 75 Wn. App. __ (Div. I, 1994 -- August 22, 1994) where the Court of Appeals has adopted a quasi-objective "pretext" stop rule which asks the question: "Did the officer deviate from normal procedures in making the stop? In Chapin, the Court answered "No" and upheld the defendant's conviction, but its "pretext arrest" rule may have

some serious ramifications which we will discuss in next month's entry.

We will also digest State v. Goucher, __ Wn.2d __ (1994 -- September 29, 1994) where the State Supreme Court has ruled that a narcotics officer executing a search warrant did not violate the constitutional privacy rights of a person who phoned the residence during the search, when the officer answered the phone, set up a "drug sale" with the caller, and subsequently arrested him.

Finally, we will address the Washington State Patrol's recent amendments to WAC 204-10-040; the Patrol adopted the amendments in order to cure notice problems in the statutes and regulations requiring motorcycle helmets, as found by the Court of Appeals in State v. Maxwell, 74 Wn. App. 688 (Div. III, 1994).

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The Law Enforcement Digest is edited by Assistant Attorney General, John Wasberg, Office of the Attorney General. Editorial comment and analysis of statutes and court decisions express the thinking of the writer and do not necessarily reflect the opinion of the Office of the Attorney General or the Washington State Criminal Justice Training Commission. The LED is published as a research source only and does not purport to furnish legal advice.