Law Enforcement Digest

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UNITED STATES SUPREME COURT

"SEARCH INCIDENT TO CITATION" NOT PERMITTED

Knowles v. Iowa, 119 S.Ct. 484 (1998)

Facts and Proceedings: (Excerpted from Supreme Court opinion)

> Knowles was stopped in Newton, Iowa, after having been clocked driving 43 miles per hour on a road where the speed limit was 25 miles per hour. The police officer issued a citation to Knowles, although under Iowa law he might have arrested him. The officer then conducted a full search of the car, and under the driver's seat he found a bag of marijuana and a "pot pipe." Knowles was then arrested and charged with violation of state laws dealing with controlled substances.
>
> Before trial, Knowles moved to suppress the evidence so obtained. He argued that the search could not be sustained under the "search incident to arrest" exception recognized in United States v. Robinson, 414 U.S. 218 (1973), because he had not been placed under arrest. At the hearing on the motion to suppress, the police officer conceded that he had neither Knowles' consent nor probable cause to conduct the search. He relied on Iowa law dealing with such searches.
>
> Iowa Code Ann. §321.485(1) (West 1997) provides that Iowa peace officers having cause to believe that a person has violated any traffic or motor vehicle equipment law may arrest the person and immediately take the person before a magistrate. Iowa law also authorizes the far more usual practice of issuing a citation in lieu of arrest or in lieu of continued custody after an initial arrest. See Iowa Code Ann. § 805.1(1) (West Supp. 1997). Section 805.1(4) provides that the issuance of a citation in lieu of an arrest "does not affect the officer's authority to conduct an otherwise lawful search." The Iowa Supreme Court has interpreted this provision as providing authority to officers to conduct a full-blown search of an automobile and driver in those cases where police elect not to make a custodial arrest and instead issue a citation – that is, a search incident to citation.
>
> Based on this authority, the trial court denied the motion to suppress and found Knowles guilty. [T]he Iowa Supreme Court upheld the constitutionality of the

search under a bright-line "search incident to citation" exception to the Fourth Amendment's warrant requirement, reasoning that so long as the arresting officer had probable cause to make a custodial arrest, there need not in fact have been a custodial arrest.

[Footnote and some citations omitted]

ISSUE AND RULING: Is it lawful for a law enforcement officer to search a vehicle passenger compartment incident to issuance of a citation to the driver? (ANSWER: No, rules a unanimous Supreme Court) Result: Reversal of Iowa conviction for marijuana possession.

ANALYSIS: (Excerpted from Supreme Court opinion)

> In Robinson, we noted the two historical rationales for the "search incident to arrest" exceptions: (1) the need to disarm the suspect in order to take him into custody, and (2) the need to preserve evidence for later use at trial. But neither of these underlying rationales for the search incident to arrest exception is sufficient to justify the search in the present case.
>
> We have recognized that the first rationale – officer safety – is "'both legitimate and weighty,'". The threat to officer safety from issuing a traffic citation, however, is a good deal less than in the case of a custodial arrest. In Robinson, we stated that a custodial arrest involves "danger to an officer" because of "the extended exposure which follows the taking of a suspect into custody and transporting him to the police station." We recognized that "[t]he danger to the police officer flows from the fact of the arrest, and its attendant proximity, stress, and uncertainty, and not from the grounds for arrest." A routine traffic stop, on the other hand, is a relatively brief encounter and "is more analogous to a so-called 'Terry Stop' … than to a formal arrest."
>
> This is not to say that the concern for officer safety is absent in the case of a routine traffic stop. It plainly is not. But while the concern for officer safety in this context may justify the "minimal" additional intrusion of ordering a driver and passengers out of the car, it does not by itself justify the often considerably greater intrusion attending a full field-type search. Even without the search authority Iowa urges, officers have other, independent bases to search for weapons and protect themselves from danger. For example, they may order out of a vehicle both the driver, and any passengers, perform a "patdown" of a driver and any passengers upon reasonable suspicion that they may be armed and dangerous, Terry v. Ohio, 392 U.S. 1 (1968); conduct a "Terry patdown" of the passenger compartment of a vehicle upon reasonable suspicion that an occupant is dangerous and may gain immediate control of a weapon, Michigan v. Long, 463 U.S. 1032 (1983); and even conduct a full search of the passenger compartment, including any containers therein, pursuant to a custodial arrest, New York v. Belton, 453 U.S. 454, 769 (1981).
>
> Nor has Iowa shown the second justification for the authority to search incident to arrest – the need to discover and preserve evidence. Once Knowles was stopped for speeding and issued a citation, all the evidence necessary to prosecute that offense had been obtained. No further evidence of excessive speed was going to be found either on the person of the offender or in the passenger compartment of the car.
>
> Iowa nevertheless argues that a "search incident to citation" is justified because a suspect who is subject to a routine traffic stop may attempt to hide or destroy evidence

related to his identity (e.g., a driver's license or vehicle registration), or destroy evidence of another, as yet undetected crime. As for the destruction of evidence relating to identity, if a police officer is not satisfied with the identification furnished by the driver, this may be a basis for arresting him rather than merely issuing a citation. As for destroying evidence of other crimes, the possibility that an officer would stumble onto evidence wholly unrelated to the speeding offense seems remote.

In Robinson, we held that the authority to conduct a full field search as incident to an arrest was a "bright-line rule," which was based on the concern for officer safety and destruction or loss of evidence, but which did not depend in every case upon the existence of either concern. Here we are asked to extend that "bright-line rule" to a situation where the concern for officer safety is not present to the same extent and the concern for destruction or loss of evidence is not present at all. We decline to do so. The judgment of the Supreme Court of Iowa is reversed, and the cause remanded for further proceedings not inconsistent with this opinion.

[Some citations omitted]

LED EDITOR'S COMMENT: This is an unsurprising decision. We agree entirely with the Supreme Court ruling that officers with discretion to either issue a citations or make a custodial arrest do not have authority to make a "search incident" following issuance of a citation. We don't think that the Knowles decision will have any effect on the standards relating to "search incident to arrest."

TWO-HOUR VISITORS TO HOME HAVE NO 4th AMENDMENT PRIVACY PROTECTION

Minnesota v. Carter, 119 S. Ct. 469 (1998)

Facts: (Excerpted from majority opinion)

James Thielen, a police officer in the Twin Cities' suburb of Eagan, Minnesota, went to an apartment building to investigate a tip from a confidential informant. The informant said that he had walked by the window of a ground-floor apartment and had seen people putting a white powder into bags. The officer looked in the same window through a gap in the closed blind and observed the bagging operation for several minutes. He then notified headquarters, which began preparing affidavits for a search warrant while he returned to the apartment building. When two men left the building in a previously identified Cadillac, the police stopped the car. Inside were [defendants] Carter and Johns. As the police opened the door of the car to let Johns out, they observed a black zippered pouch and a handgun, later determined to be loaded, on the vehicle's floor. Carter and Johns were arrested, and a later police search of the vehicle the next day discovered pagers, a scale, and 47 grams of cocaine in plastic sandwich bags.

After seizing the car, the police returned to Apartment 103 and arrested the occupant, Kimberly Thompson, who is not a party to this appeal. A search of the apartment pursuant to a warrant revealed cocaine residue on the kitchen table and plastic baggies similar to those found in the Cadillac. Thielen identified Carter, Johns, and Thompson as the three people he had observed placing the powder into baggies. The police later learned that while Thompson was the

> lessee of the apartment, Carter and Johns lived in Chicago and had come to the apartment for the sole purpose of packaging the cocaine. Carter and Johns had never been to the apartment before and were only in the apartment for approximately 2 1/2 hours. In return for the use of the apartment, Carter and Johns had given Thompson one-eighth of an ounce of the cocaine.

Proceedings: Carter and Johns were charged with drug crimes in the Minnesota courts. They moved to suppress the drugs on grounds that the investigating officer violated their Fourth Amendment privacy rights by observing them through a crack in the window blinds. They lost their motion in the trial court, which held that: a) as mere two-hour guests visiting the home for purely commercial purposes, they had no privacy rights; and b) the officer's action of looking through the blinds was not a "search" in any event. Carter and Johns were convicted. The Minnesota Supreme Court subsequently reversed, holding that even two-hour commercial guests in a home have privacy rights, and that such rights were violated by the officer's peeking.

ISSUE AND RULING: 1) Under the Fourth Amendment, do persons paying a short-term (not overnight) visit to a home for commercial purposes have a reasonable expectation of privacy in the home of their host? (ANSWER: No, rules a 5-4 majority); 2) Assuming a "Yes" answer to question 1, was it a "search" for the officer to stand close to the window of the ground floor apartment and look through a crack in the blinds? (ANSWER: Only Justice Breyer addresses this question, so no ruling results on it). Result: Reversal of Minnesota Supreme Court suppression ruling, and remand to Minnesota courts for further proceedings.

ANALYSIS IN REHNQUIST OPINION: Justice Rehnquist writes a majority opinion, which is joined in most respects by Justices O'Connor, Scalia, Thomas and Kennedy. Rehnquist's majority opinion notes that the Fourth Amendment's text appears to provide protection only to individuals in their own homes. However, he notes, the U.S. Supreme Court had previously extended this limited protection to overnight guests in Minnesota v. Olson, 495 U.S. 91 (1990) **June 90 LED:02.**

In its 1990 Olson decision, the U.S. Supreme Court had explained why it found a legitimate privacy expectation for an overnight guest:

> "To hold that an overnight guest has a legitimate expectation of privacy in his host's home merely recognizes the every day expectations of privacy that we all share. Staying overnight in another's home is a long-standing social custom that serves functions recognized as valuable by society. We stay in others' homes when we travel to a strange city for business or pleasure, we visit our parents, children, or more distant relatives out of town, when we are in between jobs, or homes, or when we house-sit for a friend ....
> "From the overnight guest's perspective, he seeks shelter in another's home precisely because it provides him with privacy, a place where he and his possessions will not be disturbed by anyone but his host and those his host allows inside. We are at our most vulnerable when we are asleep because we cannot monitor our own safety or the security of our belongings. It is for this reason that, although we may spend all day in public places, when we cannot sleep in our own home we seek out another private place to sleep, whether it be a hotel room, or the home of a friend."

But defendants Carter and Johns don't qualify for the protection given overnight guests, Rehnquist explains:

> Defendants here were obviously not overnight guests, but were essentially present for a business transaction and were only in the home a matter of hours. There is no suggestion that they had a previous relationship with Thompson, or that there was any other purpose to their visit. Nor was there anything similar to the overnight guest relationship in Olson to suggest a degree of acceptance into the household. While the apartment was a dwelling place for Thompson, it was for these respondents simply a place to do business.
>
> Property used for commercial purposes is treated differently for Fourth Amendment purposes than residential property. "An expectation of privacy in commercial premises, however, is different from, and indeed less than, a similar expectation in an individual's home." And while it was a "home" in which respondents were present, it was not their home. Similarly, the Court has held that in some circumstances a worker can claim Fourth Amendment protection over his own workplace. See, e.g., O'Connor v. Ortega, 480 U.S. 709 (1987). But there is no indication that respondents in this case had nearly as significant a connection to Thompson's apartment as the worker in O'Connor had to his own private office.
>
> If we regard the overnight guest in Minnesota v. Olson as typifying those who may claim the protection of the Fourth Amendment in the home of another, and one merely "legitimately on the premises" as typifying those who may not do so, the present case is obviously somewhere in between. But the purely commercial nature of the transaction engaged in here, the relatively short period of time on the premises, and the lack of any previous connection between respondents and the householder, all lead us to conclude that respondents' situation is closer to that of one simply permitted on the premises. We therefore hold that any search which may have occurred did not violate their Fourth Amendment rights.
>
> Because we conclude that respondents had no legitimate expectation of privacy in the apartment, we need not decide whether the police officer's observation constituted a "search." The judgment of the Supreme Court of Minnesota is accordingly reversed, and the cause is remanded for proceedings not inconsistent with this opinion.

[Some citations omitted]

SCALIA CONCURRENCE: Justice Scalia writes a concurring opinion joined by Justice Thomas in which he argues that the majority should have more clearly stated that the overnight guest rule of Olson sets the outside limit on privacy protection for house guests.

KENNEDY CONCURRENCE: Justice Kennedy writes a separate concurring opinion joined by no one. He asserts that, on a case by case basis, privacy protections should be extended to some social guests who are not overnight visitors. Other social guests who, like Carter and Johns, are not overnight guests, may nonetheless be able to distinguish their circumstances from those involving defendants Carter and Johns, who “established nothing more than a fleeting and insubstantial connection to the home.”

GINSBURG DISSENT: Justice Ginsburg writes a dissenting opinion joined by Justices Stevens

and Souter. She argues that the Fourth Amendment should be read to protect mere daytime visitors such as Carter and Johns, simply because the householder had chosen "to share the privacy of her home and her company with a guest."

BREYER CONCURRENCE: Justice Breyer writes an opinion joined by no one. He agrees with the dissenting Ginsburg that a mere day guest under these circumstances should be given constitutional privacy protection. However, he says he would have decided the case based on an issue not addressed in any of the other opinions of the Court. In Justice Breyer's interpretation of the factual record and the law, the investigating officer made a lawful, "open view" observation. He asserts that the Court should hold lawful the officer's confirmation of the informant's tip; the officer merely took a similar unenhanced look, from a public, ground-floor vantage point outside the curtilage of the apartment, through a gap in the blinds covering the window of the apartment.

LED EDITOR'S COMMENTS:

1. Privacy protection for "day" visitors in Washington? While it offers some comfort that a slightly smaller class of people may bring federal civil rights lawsuits than previously thought, state and local officers in Washington otherwise may be well-advised to view the Carter decision as being of academic interest only. We have at least 3 reasons for making this statement: a) questions of potential "standing" to assert rights generally shouldn't guide officer decision-making; b) Washington case law, though inconclusive, tends to support an "independent grounds" reading of the Washington State constitution establishing "automatic standing" on possession crimes; and c) it is likely that the Washington Supreme Court, though it has never addressed this particular issue as an "independent grounds" question under the state constitution, would grant state constitutional privacy protection to any person – however short the visit – inside a private home with permission of the owner or other person with authority over the premises.

2. "Open view" "through ground floor window blinds? The discussion of the facts in the majority opinion in Carter does not provide enough detail to evaluate whether such a viewing by an officer would violate a homeowner's privacy rights. Justice Breyer's lone concurrence argues for "open view" based on his reading of the factual record. Justice Breyer says that the officer looked through a gap in the window blinds at a place 1 ½ feet away from the window, while the officer was standing outdoors in a ground-floor-level area used by the public to park bicycles and by children to play. On the other hand, the Minnesota Supreme Court had asserted that the officer climbed over some bushes to gain his vantage point 1 ½ feet from the window. Because none of the other U.S. Supreme Court justices in Carter addressed the "open view" issue, the Carter decision obviously won't add anything to "curtilage" privacy law under the federal constitution. The question which would be relevant to this privacy issue would be whether the officer was standing in a public area or on an access route generally open to the public and to visitors to the residence. Where a line of bushes have been planted within a few feet of a parallel wall of a residence, and an officer climbs over the bushes to gain an artificial vantage point allowing a better look through a gap in the window blinds, this is likely an unlawful "search" unless the officer acts under a warrant or a recognized exception to search warrant requirements.

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BRIEF NOTES FROM THE WASHINGTON STATE SUPREME COURT

(1) GOVERNMENT LIMITED TO CONVICTION ON ONLY ONE COUNT OF "SIMPLE POSSESSION" OF LESS THAN 40 GRAMS WHERE MARIJUANA FOUND IN TWO PLACES; RULING IS SUBJECT TO REASONABLE TIME AND PLACE READING – In State v. Adel, 136 Wn.2d 630 (1998), the Supreme Court agrees with defendant that, because his possession of small amounts of marijuana in two separate locations on the day of his arrest was only one course of conduct, his two convictions for simple possession of marijuana violated double jeopardy.

The facts in Adel are described by the Court as follows:

> Hussain Adel was the owner and operator of a convenience store in Clark County. Officers from the Clark-Skamania Drug Task Force contacted Adel in his store for an investigative stop. The officers obtained Adel's consent to search both the store and Adel's car which was parked outside.
>
> In the car's ash tray the officers found three cigarette butts. The butts tested positive for marijuana and weighed 0.1 gram. In the store the officers found marijuana around the cash register counter. The evidence from the store weighed less than 0.2 gram. In total, the marijuana discovered both in the car and in the store amounted to less than 0.3 gram -- approximately the weight of three large paper clips.
>
> Adel was charged with two counts of simple possession of marijuana. One charge was based upon the marijuana fragments found in Adel's car, and the other charge was based upon the minuscule amount of marijuana found in the store. The district court found Adel guilty on both charges.

Applying what the Court refers to as the "unit of prosecution" test to the interpretation of the "simple possession" statute at RCW 69.50.401(e) (which prohibits possession of 40 grams or less of marijuana), the Court concludes that the statute does not authorize multiple convictions of a defendant who on a particular occasion has stashed separate small quantities of the drug in multiple places within his actual or constructive possession. The Court holds the "unit of prosecution" under the "simple possession" statute generally to be possession of 40 grams or less of marijuana, regardless of where or in how many locations the drug is kept.

Justice Talmadge writs a concurring opinion suggesting that there should be time-and-place limits on the Court's "unit of prosecution" ruling under RCW 69.50.401(e):

> I concur specially to emphasize the unit of prosecution approach to double jeopardy is necessarily one that must develop on a case-by-case basis. There may be circumstances in future cases where the jurisdictional or temporal differences in the possession of illegal substances may be so great as to suggest completely distinct units of prosecution. For example, if a person were arrested in Seattle for possessing 20 grams of marijuana, and Spokane police served a search warrant on the person's Spokane residence and found 15 grams of marijuana on that same day, two distinct units of prosecution might exist. Similarly, if a person were in possession of 20 grams of marijuana and used the substance in its entirety, and, thereafter, several days later acquired another 15 grams of marijuana for personal use, two distinct units of prosecution are likely present under such circumstances.
>
> The unit of prosecution approach to analyzing double jeopardy is appropriate, but is not completely without difficulty in its application. We must be sensitive to different factual patterns in utilizing the unit of prosecution approach to determine if there is multiple punishment for purposes of the double jeopardy clause.

[Citations omitted]

Result: Reversal of lower court rulings on Adel's double jeopardy theory; case remanded to the Clark County District Court for sentencing on conviction for one count of violation of RCW 69.50.401(e).

(2) PART OF LAWSUIT OVER SHOWING OF CORPSE PHOTOS TO OTHERS ALLOWED TO PROCEED – In Reid v. Pierce County, 136 Wn.2d 195 (1998), the Supreme Court addresses a number of issues relating to the inappropriate showing of autopsy photos of corpses. We won't address all of the many issues in the case. We would note only that one of the several allegedly inappropriate uses of the autopsy photos in the case was by an instructor on road safety who showed the photos to his classes without permission by family members of the deceased. Among other things, the Court holds that the immediate families of the deceased have a right to sue the instructor on a common law "invasion of privacy" theory. So beware of using photos of corpses to make a point about road safety. Family permission may be required for such use.

Result: Case remanded to Pierce County Sheriff's Office for civil trial on plaintiffs' common law "invasion of privacy" actions.

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WASHINGTON STATE COURT OF APPEALS

AUTHORITY FOR POLICE TO SEARCH AT THE SCENE INCIDENT TO ARREST ON WARRANT NOT LIMITED BY RCW 10.31.030 WHICH REQUIRES A) READING OF WARRANT AND B) AFFORDING OF OPPORTUNITY TO POST BAIL PER GLORIA SMITH DECISION

State v. Jordan, 92 Wn. App. 25 (Div. II, 1998)

Facts: (Excerpted from Court of Appeals opinion)

> Robert Jordan was arrested on two occasions based on outstanding warrants. Officers searched Jordan during each arrest and each time seized controlled substances from closed containers found on his person. The search in the first arrest disclosed methamphetamine in a film canister; in the second, methamphetamine was discovered in a prescription bottle. The searches took place at the scene of the arrest before Jordan was taken to the jail for booking.

Proceedings: (Excerpted from Court of Appeals opinion)

> The trial court suppressed the evidence seized from the containers because it reasoned that the searches violated RCW 10.31.030 because the officers did not read the warrant to Jordan or provide him an opportunity to post bail before the search.

ISSUES AND RULINGS: 1) Do the provisions of RCW 10.31.030, requiring that officers read arrest warrants to warrant arrestees and afford them opportunity to post bail, restrict the authority of officers to make an on-scene search following arrest on the warrant? (ANSWER: No, RCW 10.31.030 restricts only the authority to conduct a booking inventory search at the jail); 2) Was the scope of each of the searches within lawful limits? (ANSWER: Yes) Result: Reversal of Lewis County Superior Court suppression order; case remanded for trial.

ANALYSIS: (Excerpted from Court of Appeals decision)

1) RCW 10.31.030 limits only booking inventory searches

The State argues that the scope of a search conducted incident to a lawful arrest is not limited merely because the arrest is based on outstanding warrants, pursuant to RCW 10.31.030. RCW 10.31.030 provides:

> The officer making an arrest must inform the defendant that he acts under authority of a warrant, and must also show the warrant: Provided, That if the officer does not have the warrant in his possession at the time of arrest he shall declare that the warrant does presently exist and will be shown to the defendant as soon as possible on arrival at the place of intended confinement: Provided, further, That any officer making an arrest under this section shall, if the person arrested wishes to deposit bail, take such person directly and without delay before a judge or before an officer authorized to take the recognizance and justify and approve the bail, including the deposit of a sum of money equal to bail. Bail shall be the amount fixed by the warrant. Such judge or authorized officer shall hold bail for the legal authority within this state which issued such warrant if other than such arresting authority.

"This statute imposes upon an arresting officer a twofold duty when he does not have the warrant in his possession: (1) a duty to tell the arrestee that a warrant for his arrest exists; and (2) a duty to advise the arrestee that it will be shown to him as soon as possible after he is jailed."

Jordan relies upon State v. Caldera, 84 Wn. App. 527 (1997) **[May 97 LED:05]**, and State v. Smith, 56 Wn. App. 145 (1989) **[March 90 LED:12 and Feb 91 LED:18]**, for the proposition that if an arrest takes place based upon a warrant, the officer may only conduct a "patdown" for weapons and then must allow the defendant the opportunity to post bail before conducting any type of further search. These cases do not support that proposition. In both cases the officers conducted a search incident to arrest, which was not challenged, and the challenged search was the inventory search at the jail. In Caldera, the challenged search was a second search in the sally port before reading the warrant, and in Smith the search was of the suspect's purse while the officers were reading her the warrant. The court in Smith directly addresses the issue and describes it as one of timing. That is, a Stroud [search incident to arrest at the scene of arrest] search could occur at the time of arrest; but at the time of booking, when the person to be incarcerated has their goods inventoried, an opportunity to bail out of jail should be accorded. Smith plainly differentiated a search incident to arrest and an inventory search. Thus, these cases do not apply to search as incident to arrest, but to inventory searches prior to booking the defendants into jail. To read RCW 10.31.030 to treat defendants arrested upon warrants differently at the time of arrest would lead to absurd results. RCW 10.31.030 does not permit the officer to take bail at the scene of arrest or even to have the warrant available at the time of arrest. RCW 10.31.030 simply is not applicable to searches incident to arrest.

2) Scope of search incident

Jordan does not challenge the lawfulness of his arrests. Therefore, this court's inquiry is limited to whether the searches were within the permissible scope of a search incident to arrest. "[A] search incident to arrest is valid under the Fourth Amendment: (1) if the object searched was within the arrestee's control when he or she was

arrested; and (2) if the events occurring after the arrest but before the search did not render the search unreasonable."

The first question is whether the film canister and the prescription pill bottle were in Jordan's control when he was arrested. An object is within the control of an arrestee for the purposes of a search incident to an arrest as long as the object was within the arrestee's reach immediately prior to, or at the moment of, the arrest. Both the film canister and the prescription pill bottle were within Jordan's reach immediately prior to and during the arrests because they were in Jordan's pocket. The containers were in his control at the time of the arrests.

The next issue is "whether events occurring after the arrest but before the search made the search unreasonable." There is no evidence of any events, such as a significant delay between the arrest and the search, that rendered the search unreasonable.

Finally, we inquire whether the search of Jordan's pockets was within the scope of his arrest. In State v. White, 44 Wn. App. 276 (1986) **[Oct 86 LED:08]**, the police found cocaine in a cosmetic case located in the defendant's coat pocket during a search incident to arrest. The defendant did not challenge the lawfulness of the arrest or the officer's right to search, but claimed that the scope of the search was excessive. The court held that the cosmetic case in the defendant's pocket was within the scope of the search incident to arrest, noting:

> First, property seized incident to a lawful arrest may be used to prosecute the arrested person for a crime other than the one for which he was initially apprehended....
> Second, once arrested there is a diminished expectation of privacy of the person which includes personal possessions closely associated with the person's clothing.

Likewise, in State v. Gammon, 61 Wn. App. 858 (1991) **[Oct 91 LED:09]**, the defendant claimed that the search of his person incident to his arrest for shoplifting exceeded the permissible scope because the arresting officer opened a prescription pill bottle found in the defendant's pocket, resulting in the discovery of a small rock of cocaine.

> Gammon was lawfully arrested and the pill vial was discovered in the course of a permissible search. The pill vial was similar to a wallet or a cigarette package because it was an item found on Gammon or in his clothing. Under White, Gammon had a diminished expectation of privacy in the prescription bottle thus allowing a detailed inspection of the vial without a warrant. Even if the officer had not seen the irregularly shaped object in the vial, we hold the search was a permissible search incident to a lawful arrest.

We hold that the warrantless searches of Jordan's person, including the searches of his pockets, were within the scope of his arrests.

Twice, Jordan was lawfully arrested based on valid outstanding warrants. A film canister and prescription pill bottle found in Jordan's pockets during subsequent searches were within his control when arrested. Controlled substances found inside

the canister and bottle were on his person during the arrests and were admissible as evidence seized during a valid search incident to arrest.

[Some citations omitted]

LED EDITOR'S COMMENT ON ISSUE 2 (SCOPE OF SEARCH INCIDENT TO ARREST): The Court of Appeals reached the right result in its analysis of the authority of the officer to search incident to arrest. However, there is potential for confusion in the Court's use of quotes from the prior Court of Appeals decisions in State v. White (1986) and State v. Gammon (1991). The White and Gammon Courts erroneously assumed that the 1977 U.S. Supreme Court decision in U.S. v. Chadwick, 433 U.S. 1 (1977) placed some limits on contemporaneous searches of containers incident to arrest, restricting officers to searches of only those containers closely associated with the arrestee's clothing.

No subsequent Washington appellate court decision has expressly commented on this language in White or Gammon, which suggests distinguishable protection for containers depending on whether or not they are closely associated with the arrestee's clothing. However, we believe that one must reject any such suggestion based on a synthesized reading of the analysis in the opinions in State v. Fladebo, 113 Wn.2d 388 (1989) Jan 90 LED:04 (reversing a Court of Appeals decision at 61 Wn. App. 482 which had erroneously relied on Chadwick); State v. Smith, 119 Wn.2d 675 (1992) Dec 92 LED:04 [Note especially the Smith Court's explanation that, in light of later precedent, Chadwick must be very narrowly limited to its delayed-search facts, and that Chadwick does not undercut broad "bright line" search incident authority]; State v. Johnson, 128 Wn.2d 431 (1996) March 96 LED:06; and State v. Lowrimore, 67 Wn. App. 949 (Div. I, 1992) March 93 LED:15.

Based on our reading of Fladebo, Smith, Johnson and Lowrimore, as well as other cases in this state and elsewhere, we believe that the scope limits on search incident in Washington are as follows: (A) the passenger area of a vehicle and any and all unlocked containers, repositories or personal effects located in that area at the time of the arrest may be searched incident to a custodial arrest of an occupant of the vehicle; and (B) any and all unlocked containers and personal effects on the person, or located within the "lunge area" of the person, may be searched incident to a custodial arrest of that person. There is no restriction of the sort suggested in White and Gammon. We hope that prosecutors will watch for and respond to any defense arguments erroneously using White or Gammon to suggest any different "search incident" scope limits for containers and personal effects.

CORPUS DELICTI RULE DOES NOT APPLY TO STATEMENTS MADE IN NEGOTIATING PROSTITUTION DEAL – RULE COVERS ONLY ADMISSIONS OF GUILT AS TO PAST ACTS

State v. Dyson, 91 Wn. App. 761 (Div. I, 1998)

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

> Detective Lishner was working undercover in Seattle as a "john." He saw a woman named Maelynn Lane, who was standing on a street with Dyson. She approached when Lishner pulled his vehicle to the curb. She asked if she and her friend could have a ride. Lishner declined, saying he was looking for a "date." He testified that "date" is a common street term for a sexual act performed for money. Lane told Lishner to wait and went back to where Dyson was standing. After a few seconds, Dyson approached, asking Lishner what he was "looking for." Lishner replied he was looking for someone for sex. Dyson gestured at Lane, telling Lishner he could have

sex with her. Lishner agreed, and Dyson motioned Lane back to the car. Then Dyson and Lane got into the car and Dyson again asked Lishner what he wanted. Lishner replied that he wanted a "screw." Dyson told him it would cost $50. Lane agreed.

Dyson then stated he wanted $20 for his services in obtaining Lane. Lishner asked if he could give him $20 and give $30 to Lane. Dyson stated Lishner must pay him $20 in addition to the $50 to Lane. Dyson also stated he could supply an apartment. When they reached agreement, Lishner signaled for back-up and the police arrested Dyson and Lane.

Before trial, Dyson moved to suppress the statements he made to Lishner on the street. He contended there was insufficient proof independent of the statements to establish the corpus delicti. The trial court ruled there was sufficient corroborating evidence of the corpus delicti to admit Dyson's statements. Dyson was convicted as charged and given a standard range sentence.

ISSUE AND RULING: Did Dyson's statements while negotiating for an act of prostitution qualify as confessions or admissions for purposes of the corpus delicti rule? (ANSWER: No, because the statements did not express guilt as to a past act.) Result: Affirmance of King County Superior Court conviction of Eddie Dyson for second degree promotion of prostitution.

ANALYSIS: (Excerpted from Court of Appeals opinion)

Under the corpus delicti rule, the court may not consider a defendant's confession unless the State has established the commission of the crime through independent proof. The purpose of the doctrine is to prevent convictions based solely on false confessions.

Dyson's argument is based on the premise that his statements to Lishner constituted a confession. This is incorrect. The statements were made as part of the crime itself. Dyson cites no authority for the proposition that statements made during the course of the crime amount to a confession or admission. By definition, a confession is an expression of guilt as to a past act. No such confession is involved in this case. The trial court did not err in admitting evidence of the statements.

We affirm on the basis that the corpus delicti rule does not apply in this case because the defendant's statements made during the course of the crime did not constitute a confession. *[COURT'S FOOTNOTE: Compare State v. Nelson, 74 Wn. App. 380, 874 P.2d 170 (1994) (pimp's admissions while in police detention after prostitute negotiated act with undercover officer admissible; prostitute's statements during negotiations provided sufficient independent evidence of corpus delicti of crime of promoting prostitution).]*

STORAGE AREA WAS SEPARATE BUILDING FOR PURPOSES OF BURGLARY STATUTE

State v. Miller, 91 Wn. App. 869 (Div. II, 1998)

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

Martin Fryer, the resident manager of the apartment complex located at 509 N. Rock Street, testified that on June 6, 1996, he noticed an unfamiliar black station wagon parked in the alleyway next to the apartment complex. Fryer was suspicious because

another tenant, who had reported his laundry stolen the day before, also had seen an unfamiliar black station wagon parked in the back alleyway.

Fryer walked down to the laundry room where a workshop, a boiler room and storage areas are located. The storage areas are door-fronted and padlocked units used by different tenants. Fryer heard a noise coming from the workshop/paint room. He saw that the padlock on the workshop door was missing. This room contained tools belonging to the property owners and was not accessible to others. Fryer called out and saw a male, later identified as Miller, walk out of the paint room. Miller was not a tenant of the building and did not offer Fryer any legitimate reason for his presence on the premises. Fryer escorted Miller out of the building, where Miller entered the black station wagon and drove off.

Fryer telephoned 911 dispatch, reported the incident, and identified the black station wagon's license plate number. Officer Patrick Beall contacted Fryer at the apartment complex. Another officer found the station wagon in front of a convenience store. Beall drove Fryer to that location, where he identified the vehicle and Miller.

Officer Beall retrieved a master lock that was inside Miller's jacket. Fryer was able to open the lock with one of his manager's keys. Officer Beall also noticed luggage inside the black station wagon with a name tag of Monica Milliman, who was a tenant at 509 N. Rock Street. Beall and Fryer drove back to the apartment complex. They noticed that Milliman's storage area padlock had been pried open. They also found a bolt cutter in the storage area. Milliman testified that she did not give Miller permission to enter her storage locker. She also stated that she had put a padlock on her storage locker door to keep others out.

Miller moved for dismissal of Count II claiming lack of sufficient evidence. The trial court denied the motion and a jury convicted Miller of both counts.

ISSUE AND RULING: Was there sufficient evidence to support Miller's separate conviction for burglary based on his entry of a storage unit at an apartment complex? (ANSWER: Yes) Result: Affirmance of Lewis County Superior Court convictions of Daniel James Miller for two counts of burglary in the second degree.

ANALYSIS: (Excerpted from Court of Appeals opinion)

Under RCW 9A.52.030, a person is guilty of burglary in the second degree if:

"... with intent to commit a crime against a person or property therein, he [or she] enters or remains unlawfully in a building other than a vehicle or a dwelling."

"Building", in addition to its ordinary meaning, includes any dwelling, fenced area, vehicle, railway car, cargo container, or any other structure used for lodging of persons or for carrying on business therein, or for the use, sale or deposit of goods; each unit of a building consisting of two or more units separately secured or occupied is a separate building[.]
RCW 9A.04.110(5).

In State v. Thomson, 71 Wn. App. 634 (1993) **[June 95 LED:20]**, we held that when the Legislature enacted the portion of the statute following the semicolon, it intended to define "building" to include each unit of a multi-unit building where each unit is occupied by a different individual. As a result, different rooms within a single family

house are not "separate building[s]" because the residents of the house have a privacy interest in the entire house, not in each bedroom. But in a multi-unit building, each tenant has a privacy interest in his or her own unit.

In State v. Deitchler, 75 Wn. App. 134 (1994) **[Nov 95 LED:19]**, we held that a 10 in. x 10 in. x 2 ft. police evidence locker was not a building separate from the police station where it was located. We reasoned that because the police department was the only tenant with a privacy interest in both the station and the secured evidence locker, there was no separate building. In Deitchler, we further noted that case law from within and without this jurisdiction concludes that a charge of burglary is ordinarily supported if the premises entered into are large enough to accommodate a human being. Accordingly, citing Deitchler, Division III of this court recently held that breaking into coin boxes on car wash stalls supported conviction for theft, but not for burglary. State v. Miller, 90 Wn. App. 720 (1998) **[Aug 98 LED:18]**.

Here, the testimony and photographs admitted at trial indicate that the storage locker Miller broke into was large enough to accommodate a human being, that is, to allow entry or occupation. Moreover, the padlocked, door-accessed unit was secured from other tenants, the manager or building owners of the apartment complex, indicating a separate privacy interest. Viewing this evidence in the light most favorable to the State, there was sufficient evidence for the jury to convict Miller of Count II.

11-YEAR-OLD CHILD MOLESTER HAD CRIMINAL CAPACITY

State v. T.E.H., 91 Wn. App. 908 (Div. I, 1998)

Facts: (Excerpted from Court of Appeals opinion)

During the period of March to July of 1994, 11-year-old TH lived with his grandparents, along with seven of their grandchildren. Among those was his younger cousin TTS who was five years old. Many of the cousins told of a series of incidents of inappropriate touching or abuse by TH against TTS, his two sisters, and occasionally others. TH was convicted for an act against TTS that TTS described as TH forcing him to take off his clothes and face the wall in the boys' bedroom of the home. TH then forced TTS to get on his knees. TH, also naked, then approached TTS from the rear and started "bumping" him with his "middle part." It was said that TH's "private" touched TTS's anus. TTS told TH to stop it and that it hurt, but TH continued and told TTS to "shut up."

TH warned TTS and others not to tell anyone or he would kill them or he would get them in trouble. TTS said TH did this at least 10 times, maybe more. TTS said he tried to tell his mother and grandparents, but they did nothing. TTS's mother indicated that both TTS and his sister told her that TH was abusing them, but when she confronted her parents (the grandparents), they stated the kids were just causing trouble and that they wanted to hear nothing further. TTS eventually told other adults.

TH was charged in juvenile court with raping and/or molesting three of his younger cousins. The juvenile court found that TH had capacity to commit child molestation, and that he had committed this crime. He was sentenced beyond the standard range based on a manifest injustice disposition.

ISSUE AND RULING: Did the evidence establish the capacity of TH to commit the crime of child molesting? (ANSWER: Yes) Result: Affirmance of juvenile court adjudication of guilt for child molesting and of exceptional sentence.

ANALYSIS: (Excerpted from Court of Appeals opinion)

> TH argues the juvenile court erred by finding he had the capacity to commit the crime. RCW 9A.04.050 establishes a statutory presumption of incapacity where the child is between 8 and 12 years of age. The presumption of the statute applies in juvenile proceedings. The State has the burden to rebut the presumption of incapacity by clear and convincing evidence. On appeal of a determination of capacity, the juvenile court's decision must be affirmed if there was evidence from which a rational trier of fact could find capacity by clear and convincing evidence.
>
> Our decision conforms to the recent holding in State v. J.P.S. [State v. J.P.S., 135 Wn.2d 34 (1998) **July 98 LED:21**]. A juvenile's understanding of the legal prohibition and legal consequences of his/her conduct is not an indispensable requisite for determining whether the juvenile appreciates the wrongfulness of the conduct. "[I]t is not necessary for the State to prove that a child understands the illegality or the legal consequences of an act in order to prove capacity." The relevant inquiry is whether the child appreciated the quality of his or her acts at the time the act was committed.
>
> The facts here are similar to those in State v. Q.D. [102 Wn.2d 19 (1984)]. There, in dicta, the Supreme Court found sufficient evidence of capacity where an 11-year-old child committed indecent liberties on a 4-year-old child. The court held that the juvenile respondent understood the act of indecent liberties and knew it to be wrong based on the facts that: (1) the respondent waited until she and the victim were alone, evidencing a desire for secrecy, (2) the respondent was capable of supervising the child as a baby-sitter and likely had the capacity to commit the offense against the child, (3) the respondent admonished the victim not to tell anyone what happened, and (4) the respondent was 11 years old, close to the age where capacity is presumed to exist.
>
> In the instant case we conclude there was sufficient evidence presented for a rational trier of fact to find capacity by clear and convincing evidence. There was evidence that TH: (1) sometimes supervised the children when the grandparents left the home; (2) perpetrated his acts mainly when alone with the children, showing his desire for secrecy; (3) threatened to kill the children if they revealed what he was doing to them; (4) had been taught about personal privacy and that children should not expose themselves; (5) committed the acts over an extended period of time; and (6) was close in age to that where he would be presumed to have capacity.
>
> This is not a case where TH was "playing doctor" or being curious or experimental. The testimony showed a pattern of abuse over a long period of time. As in [State v. J.F., 87 Wn. App. 787 (Div. I, 1997) **Feb 98 LED:10**] the nature of the crime is relevant to show TH's understanding of the consequences of his acts. " 'The more intuitively obvious the wrongfulness of the conduct, the more likely it is that a child is aware that some form of societal consequences will attach to the act.' " The finding of capacity is affirmed.

[Some citations omitted]

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BRIEF NOTES FROM THE WASHINGTON STATE COURT OF APPEALS

(1) OFFICER HAD PROBABLE CAUSE TO ARREST FOR DUI BASED ON FST PHYSICALS AND ON DEFENDANT'S ADMISSION TO DRINKING; NO COLLATERAL ESTOPPEL IN DOL REVOCATION ACTION WHERE ERROR OF LAW IN EARLIER CRIMINAL PROCEEDING – In Thompson v. DOL, 91 Wn. App. 887 (Div. II, 1998), the Court of Appeals upholds DOL's revocation, or "disqualification," of Clayton T. Thompson's commercial driver's license.

The procedural chronology of the case is described by the Court of Appeals as follows:

> On August 15, 1995, Thompson was prosecuted in Clark County District Court for driving a commercial vehicle with alcohol in his system. RCW 46.25.170(2); 46.25.110. The district court suppressed the breath test after concluding that it was inaccurate and misleading to read both the DUI and the commercial vehicle implied consent warnings. The charge was then apparently dismissed.
>
> On September 14, 1995, Thompson's license disqualification was reviewed by a Department of Licensing hearing examiner. The hearing examiner affirmed the disqualification, and Thompson appealed to the Clark County Superior Court. Thompson argued in a motion for summary judgment and in his trial memorandum that, under the doctrine of collateral estoppel, the district court's suppression of the breath test should prevent relitigation of the same issue in the license disqualification proceeding. He also argued that the breath test should be suppressed because the warnings were inadequate. Following a trial de novo, the superior court sustained the ruling of the hearing examiner.

Next, the Court of Appeals frames the issue in the case that follows:

> We first consider whether the results of the breath test should have been suppressed because the warnings were inaccurate: Trooper Holland read Thompson two different implied consent warnings, one for persons who are suspected of driving while under the influence of alcohol and one for commercial drivers. The DUI warning should be given when a person is under arrest because there are reasonable grounds to believe the person has been driving while under the influence of an intoxicating liquor. RCW 46.20.308. The commercial implied consent warning should be given to a commercial driver when there is probable cause to believe he is driving with alcohol in his system. RCW 46.25.120. Thompson argues that the trooper did not have probable cause to arrest him for DUI, and, therefore, the DUI warning should not have been given. He also argues that, because the DUI warning contains additional consequences for refusal to take the breath test, he was unable to make an intelligent decision about whether to submit to the test.

The Court of Appeals rules as follow on the three issues described in the above quote:

1) Reasonable grounds (probable cause) to arrest for DUI? Even though the officer was not certain in her own mind whether she had sufficient grounds for arrest, the following facts met the PC standard, the Court of Appeals declares:

> [E]ach officer testified that Thompson's eyes were bloodshot and watery and that he smelled of intoxicants. In addition, he swayed slightly on the balance test and did not count out loud as instructed on the walk and turn test. Thompson also told Officer Wright that he had been drinking whiskey earlier that morning. This information was relayed to Officer Holland when she arrived at the weigh station. Because there was probable cause to arrest Thompson for DUI, the DUI implied consent warning was properly given.

2) Confusing dual warnings? The Court of Appeals declares that it need not resolve the defendant "confusion" argument, because, even if the officer should not have given Thompson both "commercial driver's license" and "personal driver's license" implied consent warnings, this would not have prejudiced Thompson under the facts of this case:

> Because Thompson's alcohol concentration was above .04 but less than .10, he was subject to penalties and disqualification under the Uniform Commercial Driver's License Act (UCDLA). Under the UCDLA, a refusal to submit to the breath test would have resulted in disqualification of his commercial license for at least one year. RCW 46.25.090(1); 46.25.120(4). By submitting to the test with an alcohol concentration above .04, Thompson received the same penalty. See RCW 46.25.090(1)(b). Thus, even if giving two warnings was confusing and may have encouraged him to submit to the test, Thompson was not prejudiced because the result would have been the same if he had exercised his right to refuse the test.

3) Collateral estoppel? The Court of Appeals rejects Thompson's argument that the DOL should be held to an earlier ruling in the criminal proceedings following his arrest. A judge in the criminal proceedings had earlier ruled that the charges had to be dismissed due to "confusing and misleading" dual warnings given by the arresting officer. The Court of Appeals notes on this issue that while the State is generally held to a trial court ruling in a parallel case, it will not be held to that ruling where an error of law was made in the parallel case. The Thompson Court holds that the trial court in the criminal case committed legal error in failing to recognize that Thompson was not prejudiced even if the dual warnings were improper or confusing.

Result: Affirmance of Clark County Superior Court decision affirming DOL commercial driver's license revocation.

(2) FIREWORKS EXCEPTION IN EXPLOSIVES ACT GIVEN NARROW INTERPRETATION – In State v. Yokley, 91 Wn. App. 773 (Div. I, 1998), the Court of Appeals reverses the trial court's dismissal of charges under the Explosives Act.

In May 1996, an informant and undercover officer phoned Donald Yokley at his home and placed an order for 5,000 M-80s, 200 M-100s, 60 M-250s, 200 5-inch tube devices, and a number of aerial launchers or mortars used for launching shells into the air. Yokley delivered those items to the undercover officer in a parking lot at the Northgate Mall. Police subsequently obtained a warrant to search the Yokleys' apartment and vehicles. The search netted numerous explosive items, including M-250s and tennis ball bombs, as well as tools and materials used in manufacturing those items.

The Yokleys were charged with engaging in "Explosive Devices Activity Without a License." However, the trial court ruled that the items delivered at the mall were exempt from the Explosives Act (chapter 70.74 RCW), because they were "fireworks" (see chapter 70.77 RCW). The State appealed both rulings.

The Court of Appeals reverses in Yokley, ruling that the items on which charges were based were not exempt "fireworks" under the Explosives Act. In detailed analysis, the Court of Appeals explains why the "fireworks" exemption in the Explosives Act must be given a narrow interpretation under which the devices at issue in this case must be deemed to be "explosives," not "fireworks." **[LED EDITOR'S NOTE: we will not set out or attempt to summarize here the highly technical analysis by the Court of Appeals of state statutes, federal regulations, and standards of the American Pyrotechnics Association.]**

Result: Reversal of King County Superior Court dismissal order; remanded for trial on all Explosives Acts counts against Donald and Penny Yokley.

(3) "REASONABLE PERSON" KNOWLEDGE INFERENCE HELPS "BAIL JUMPING" CONVICTION TO WITHSTAND DEFENDANT'S "I GOT CONFUSED ABOUT MY COURT DATES" DEFENSE – In State v. Bryant 89 Wn. App. 857 (Div. I, 1998), the Court of Appeals rejects Vincent Lee Bryant's sufficiency-of-the-evidence challenge to his "bail jumping" conviction.

Bryant was charged with robbery in the second degree by information. On December 2, 1994, the trial court ordered Bryant to post either $10,000 cash bail or a $20,000 bond, and to appear for an omnibus hearing on December 8, 1994. Bryant posted a $20,000 bond but failed to appear at the omnibus hearing. The omnibus judge forfeited the bond and issued a bench warrant. Four days later, Bryant voluntarily appeared before the

omnibus court in the company of his attorney, claiming that he had become confused about his court dates with respect to the robbery charge and a different charge pending in another county.

The State then charged Bryant with bail jumping in addition to robbery in the second degree. On January 26, 1995, following a three-day trial, a jury convicted Bryant of bail jumping and, instead of robbery in the second degree, theft in the third degree. On appeal, Bryant argued that there was insufficient evidence that he "knowingly" failed to appear.

RCW 9A.76.170 provides:

> (1) Any person having been released by court order or admitted to bail with the requirement of a subsequent personal appearance before any court of this state, and who **knowingly** fails to appear as required is guilty of bail jumping.

Under RCW 9A.08.010(1)(b), a person acts "knowingly" when:

> (i) he is aware of a fact, facts, or circumstances or result described by a statute defining an offense; or
> (ii) he has information which would lead a reasonable man in the same situation to believe that facts exist which facts are described by a statute defining an offense.

The Court of Appeals holds that a jury could reasonably infer that a person who was told of a court date in open court would not forget it. Accordingly, there was sufficient evidence to support defendant Bryant's bail jumping conviction.

Result: Affirmance of Snohomish County Superior Court bail jumping conviction; Bryant apparently did not appeal his third degree theft conviction.

(4) FILING OF JURY VERDICT NOT YET REDUCED TO JUDGMENT IS "CONVICTION" FOR PURPOSES OF FELONY CLASSIFICATION OF REPEAT VIOLATION OF NO CONTACT ORDER -- In State v. Jackson, 91 Wn. App. 488 (Div. I, 1998), the Court of Appeals rejects a domestic violence defendant's argument that jury verdicts not yet reduced to judgments do not constitute prior convictions for purposes of the RCW 10.99.040(4)(c), which provides:

> A willful violation of a court order issued under this section is a class C felony if the offender has at least two previous convictions for violating the provisions of a no-contact order...

Defendant willfully violated a domestic violence protection order in January of 1997. At that point in his DV career, he had a history of: (A) one prior conviction against him for willful violation of a DV protection order that had been reduced to a formal judgment, and (B) two additional jury verdicts for separate willful violations of protection orders, neither of which verdicts had yet been reduced to formal judgment as of the date of his January violation.

The Court of Appeals rejects defendant's argument and agrees with the trial court, ruling that the definition of "conviction" under RCW 10.99.040(c) is the same as that provided under the [criminal] "harassment" statute, which reads in relevant part:

> ...a person has been "convicted" at such time as a plea of guilty has been accepted or a verdict of guilty has been filed, notwithstanding the pendency of any future proceedings including but not limited to sentencing, posttrial motions, and appeals.

RCW 9A.46.100. Under this definition, defendant had three prior convictions of willful violations of DV orders, the Court of Appeals holds.

Result: Affirmance of King County Superior Court felony convictions of Cedric Jackson, Sr. for violations of RCW 10.99.040.

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ALASKA INCLUDES DISPATCHERS UNDER POLICE TEAM/COLLECTIVE KNOWLEDGE RULE FOR TESTING PROBABLE CAUSE AND REASONABLE SUSPICION

As a general rule, we do not report in the LED court decisions from other states or from federal circuit courts other than our own Ninth Circuit. That is because many opinions are issued by the courts of other jurisdictions on a variety of issues every month, and even if such opinions address questions not yet addressed by the Washington courts, the rules that they state are not controlling in the Washington courts and may ultimately be rejected by the Washington courts. We have decided to vary from our general practice, however, to report on a recent Alaska Court of Appeals decision. That is because we believe the Alaska decision correctly follows a strong majority view on an important, though infrequently litigated, issue on which there appears to be confusion in Washington. The issue addressed has not been squarely addressed in any Washington appellate court decision, although it might be argued that State v. Walker, 66 Wn. App. 622 (Div. I, 1992) **Jan. '93 LED:16** impliedly supports a position contrary to that taken by the Alaska Court of Appeals.

In Alaska v. Prater, 958 P.2d 1110 (Al. 1998), the Alaska Court of Appeals holds that an E-911 dispatcher is part of the "police team" for purposes of the "collective knowledge" rule for evaluating reasonable suspicion and probable cause. Thus, the Prater Court holds that an investigative stop made by police officers relying on a police dispatcher's bulletin is justified "if the dispatcher who broadcast the bulletin possessed reasonable suspicion ... justifying the stop," even if the reasonable suspicion was not fully articulated to the officers by the dispatcher. The Prater Court cites decisions from courts of other jurisdictions, as well as citing Professor LaFave's treatise on "Search and Seizure," in support of its statement that its holding is consistent with the majority rule nationally.

A word of caution, however. Ideally, officers responding to a dispatch will try to learn the underlying basis of the report so that the prosecutor will not have to rely on a Prater-type argument to support a Terry seizure or arrest.

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The Law Enforcement Digest is edited by Assistant Attorney General, John Wasberg, Office of the Attorney General. Phone 206 464-6039; Fax 206 587-4290; Address 900 4th Avenue, Suite 2000, Seattle, WA 98164-1012; E Mail [johnw1@atg.wa.gov]. 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. LED's from January 1992 forward are available on the Commission's Internet Home Page at: http://www.wa.gov/cjt