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SEPTEMBER LED TABLE OF CONTENTS

WASHINGTON STATE SUPREME COURT....2

STATE HIGH COURT MAKES RESTRICTIVE READING OF FOURTH AMENDMENT TO HOLD THAT LATE- NIGHT HOUR AND LACK OF "LEGITIMATE (POLICE) BUSINESS" JUSTIFICATION INVALIDATES POLICE ENTRY INTO OTHERWISE IMPLIEDLY OPEN CURTILAGE AT RESIDENCE
State v. Ross, ___ Wn. 2d ___ , 4 P.3d 130 (2000) 2

FOURTH AMENDMENT "COMMUNITY CARETAKING FUNCTION" DOES NOT JUSTIFY SEIZURE OF YOUNG-LOOKING TEENAGER OUT ON A SCHOOL NIGHT WITH OLDER, POSSIBLY DRUG-INVOLVED COMPANIONS IN DOWNTOWN SEATTLE
State v. Kinzy, ___ Wn.2d ___ (2000) 2000 WL 1028531 7

BRIEF NOTE FROM THE WASHINGTON STATE SUPREME COURT 10

PARENT HAS CAUSE OF ACTION AGAINST DSHS FOR NEGLIGENT INVESTIGATION; NO-CONTACT ORDER DOES NOT BREAK THE CHAIN OF LEGAL CAUSATION BETWEEN DSHS'S ALLEGED NEGLIGENCE AND PARENT'S ALLEGED INJURY
Tyner v. Department of Social and Health Services, 141 Wn.2d 68 (2000)....10

WASHINGTON STATE COURT OF APPEALS 11

NO LEGAL BASIS FOR LAWSUIT BASED ON POLICE SHOOTING OF MAN WHO POLICE SHOT AFTER HE POINTED RIFLE AT THEM AND AT HIS WIFE
Estate of Lee v. City of Spokane, 101 Wn. App. 158 (Div. III, 2000)....11

STRIKER/GREENWOOD SPEED TRIAL/SPEEDY ARRAIGNMENT RULE VIOLATED WHERE ARREST WARRANT NOT TIMELY ENTERED IN STATE COMPUTER SYSTEM
State v. King, ___ Wn. App. ___, 2 P.3d 1012 (Div. II, 2000) 15

BRIEF NOTE FROM THE WASHINGTON STATE COURT OF APPEALS 17

HEARSAY QUALIFIES AS "EXCITED UTTERANCES" DESPITE POST-EVENT PASSAGE OF TIME AND DESPITE POST-EVENT QUESTIONING BY THE POLICE
State v. Williamson, 100 Wn. App. 248 (Div. III, 2000)....17

PRE-TRIAL NO-CONTACT ORDER IS INVALID IF IT FAILS TO INFORM THE RESPONDENT THAT CONSENT TO A VIOLATION IS NOT A DEFENSE
State v. Marking, 100 Wn. App. 506 (Div. II, 2000) 19

PRISON INMATE'S HOMEMADE PAPER-AND-PENCIL SPEAR IS NOT A DEADLY WEAPON FOR PURPOSES OF SECOND DEGREE ASSAULT CHARGE
State v. Skenandore, 99 Wn. App. 494 (Div. II, 2000)....19

POLICE OFFICER RECOVERS $5191.05 IN DAMAGES, COSTS AND ATTORNEY FEES FOR BEING ERRONEOUSLY NAMED IN FEDERAL COURT CIVIL SUIT 21

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WASHINGTON STATE SUPREME COURT

STATE HIGH COURT MAKES RESTRICTIVE READING OF FOURTH AMENDMENT TO HOLD THAT LATE-NIGHT HOUR AND LACK OF "LEGITIMATE (POLICE) BUSINESS" JUSTIFICATION INVALIDATES POLICE ENTRY INTO OTHERWISE IMPLIEDLY OPEN CURTILAGE AT RESIDENCE

State v. Ross, ___ Wn.2d ___, 4 P.3d 130 (2000)

Facts: (Excerpted from Supreme Court majority opinion)

> In February 1995, Pierce County Deputy Sheriff [A] went to 8310 Woodbourne Road S.W. to investigate an anonymous informant's tip regarding a marijuana grow operation at that location. While there, he saw a blue Chevy Blazer in the driveway and learned that it was registered to the Defendant.
>
> On March 24, 1995, at around 8:30 p.m., Deputy [A], along with Deputy [B], returned to Defendant's residence. They were in an unmarked car and wearing street clothes. The house and detached garage are located between two streets running north and south, Luzader Street on the west and Woodbourne Road S.W. curving east at the southeast corner of the property. The property has two entrances. They parked their car along Luzader Street and walked up the driveway to the corner of Defendant's garage. When they reached the corner of Defendant's garage, Deputy [B] smelled the odor of growing marijuana. Deputy [A] did not smell marijuana but did notice mold and mildew on the inside of a garage window. Deputy [B] immediately turned around and started walking back to the car, motioning Deputy [A] to follow. Later that evening, Deputy [A] indicated to Deputy [B] that he did not feel comfortable stating in an affidavit that he had smelled growing marijuana and wanted to double check the garage for evidence of growing marijuana. The deputies returned to the Defendant's residence at 12:10 a.m. and again approached the garage from the driveway on Luzader. They confirmed the smell of marijuana and left without approaching the front door or attempting to contact the residents.
>
> Deputy [A] filed an affidavit of probable cause and obtained a search warrant which was executed on March 31. Police found growing marijuana plants in the garage and house and packaged cut marijuana in the house.

[Officer's names deleted]

Proceedings: The Pierce County Superior Court denied Ross's motion to suppress the evidence, finding that the deputies had gone on Ross's property "on legitimate business," that they "used the most apparently normal, most direct access route to the house," that Ross did not have a "reasonable expectation of privacy in the area from which the deputies smelled the marijuana," and that "such area was impliedly open to the public."

On appeal, however, the Court of Appeals reversed in two separate opinions sequentially separated by a State Supreme Court decision directing the Court of Appeals to reconsider

its first opinion. The State Supreme Court then granted review of the Court of Appeals' second decision.

ISSUE AND RULING: Did the deputies violate Ross's Fourth Amendment rights by entering Ross's side driveway at 12:10 a.m. and approaching his garage to make additional observations to support preparation of a search warrant? (ANSWER: Yes, rules a 7-2 majority.)

Result: Affirmance of Court of Appeals decision which had reversed the Piece County Superior Court conviction of Tacoma attorney Gary William Ross for manufacture and possession of a controlled substance.

ANALYSIS BY MAJORITY: (Excerpted from majority opinion)

> The State argues that the Court of Appeals' decision is in conflict with a number of this court's opinions discussing the "open view" doctrine. The State contends that as long as an officer remains in an area that is impliedly open to the public, the officer will not intrude upon a constitutionally protected expectation of privacy unless the officer uses a particularly intrusive method of viewing or observing. Because the deputies here did not depart from an area impliedly open to the public, the State claims, and used only their sense of smell and sight unaided by any enhancement device, they did not invade the Defendant's reasonable expectation of privacy.
>
> The Defendant argues, however, that the police entry onto his property did not satisfy the requirements of the "open view" doctrine. As a result, the officers conducted an unlawful search, the result of which cannot be used to establish probable cause for the issuance of a search warrant.
>
> It is well-established that if information contained in an affidavit of probable cause for a search warrant was obtained by an unconstitutional search, that information may not be used to support the warrant. The affidavit in support of the warrant in this case relies on the evidence gathered by the deputies during their two entries onto the Defendant's property. The trial court, with the State's agreement, excised from the affidavit Deputy [B]'s allegation that he smelled marijuana when he entered the property at 8:30 p.m. Accordingly, our analysis will be limited to Deputy [A]'s observations.
>
> We begin with the well-recognized principle that warrantless searches are per se unreasonable under both the Fourth Amendment and article I, section 7 of our state constitution unless they fall within a few specifically established and well-delineated exceptions. A person's home has generally been viewed as the area most strongly protected by the constitution. The curtilage of a home is "'so intimately tied to the home itself that it should be placed under the home's "umbrella" of Fourth Amendment protection.'"
>
> As this court stated in State v. Seagull, 95 Wn.2d 898 (1981), however, "[i]t is clear that police with legitimate business may enter areas of the curtilage which are impliedly open, such as access routes to the house." An officer with legitimate business, when acting in the same manner as a reasonably

respectful citizen, is permitted to enter the curtilage areas of a private residence which are impliedly open, such as access routes to the house. Under the "open view" doctrine, detection by an officer who is lawfully present at the vantage point and able to detect something by utilization of one or more of his senses does not constitute a search within the meaning of the Fourth Amendment. In Seagull, this court considered a number of facts in determining whether an officer has substantially and unreasonably departed from an area impliedly open to the public or has engaged in a particularly intrusive method of viewing such that the scope of the implied invitation has been exceeded and an unconstitutional search has occurred.

Before reaching the Seagull inquiry, however, the first requirement of the "open view" doctrine must be satisfied. That is: the officer must be conducting legitimate business when he enters the impliedly open areas of the curtilage.

In this case, the trial judge concluded that Deputies [B] and [A] "were on legitimate business, investigating an allegation of a crime." In reaching this conclusion, the trial judge considered the 8:30 p.m. and 12:10 a.m. entries together. This was incorrect. Deputy [B]'s observation regarding the smell of marijuana made during the 8:30 p.m. entry was stricken from the affidavit of probable cause, leaving only Deputy [A]'s statement about mold and mildew on the window of the garage which would not support probable cause for a search warrant. To uphold the search pursuant to the warrant then, the State must demonstrate that Deputy [A] entered the Defendant's property at 12:10 a.m. to conduct legitimate business.

The affidavit of probable cause states that Deputy [A] did not detect the smell of marijuana during the 8:30 p.m. entry. In testimony, Deputy [B] stated that he and Deputy [A] returned to the Defendant's residence at 12:10 a.m. so that Deputy [A] could confirm the smell of marijuana for purposes of preparing the affidavit of probable cause. Thus, contrary to the dissent's view that the officers were on legitimate police business investigating criminal activity, the officers' purpose was not to investigate criminal activity but to obtain information to prepare the affidavit in order to obtain a search warrant. **[See LED Editorial comment below regarding this unusual distinction.]**

In a case very similar to this, State v. Johnson, 75 Wn. App. 792 (Div. II, 1994) **Jan 95 LED:19** the Court of Appeals found that Drug Enforcement Agency (DEA) agents were not lawfully on the Defendant's property. There the court observed:

> the DEA agents were not using the road merely as a way to gain access to the Johnson's' house. Rather they were using it as the most convenient route on which to trespass on the Johnsons' property. The record demonstrates that the DEA agents never attempted to approach the house or contact the occupants. Indeed, it is obvious that they had no intention of doing so; rather they furtively entered the Johnsons' property under cover of darkness in an apparent effort to look for a

> marijuana grow operation. Unlike the officers in Seagull and [State v.] Vonhof, [51 Wn. App. 33, 751 P.2d 1221 (1988), review denied, 111 Wn. 2d 1010, cert. denied, 488 U.S. 1008, 109 S.Ct. 790, 102 L.Ed.2d 782 (1989),] their only purpose was to conduct a search and gain information by trespassing on private property.

> As in Johnson, the deputies here entered the Defendant's property for the express, and sole, purpose of searching for evidence of a marijuana grow operation in order to obtain a search warrant. The deputies entered the property at 12:10 a.m., an hour when no reasonably respectful citizen would be welcome absent actual invitation or an emergency. They had no intention of contacting the Defendant. From the facts presented here we can only conclude that the deputies were not conducting legitimate business when they returned to the Defendant's property at 12:10 a.m. and were, therefore, not lawfully on the property. We conclude that the evidence gathered during the 12:10 a.m. entry must be suppressed.

[Some citations omitted; officer's names deleted]

CONCURRING OPINION: Justice Talmadge writes a concurring opinion joined by no other justices. Justice Talmadge would place severe restrictions on police entrances onto private property, far beyond the implied restrictions on entry by members of the general public.

DISSENT: Justice Ireland writes a dissent joined by Justice Guy. She argues in vain that the deputies' actions were reasonable and did not violate any legitimate expectation of privacy held by Ross.

LED EDITORIAL COMMENT: The Ross majority opinion is a good news/bad news result. The good news is that the majority adheres to the rule that a trial court's fact findings supported by substantial evidence must stand on appeal. The trial court in Ross had found that, in going through a side-yard driveway, the deputies had approached Ross's garage along an access route impliedly open (at least during most hours of the day) to the public. The Supreme Court holds that the Court of Appeals erred in finding, contrary to the trial court finding, that the driveway area was not impliedly open to the public.

The bad news is that the Ross majority showed, once again, that, where drug investigations are involved, the Washington appellate courts seem to be somewhat result-oriented and seem to have only limited compunction about micro-managing police work with arcane and restrictive rules. We (this is the "royal we" of your senior LED editor) say "result-oriented" because we have to wonder if the deputies had gone on their undercover snooping mission to investigate a neighbor's report of the stench of rotting flesh from, say, a Mr. Gacy's or a Mr. Dahmer's garage, the Court's analysis would have been different. We say "arcane" because we have difficulty determining from the words used by the Ross majority what limits its "legitimate (law enforcement) business" restriction places on law enforcement. We have been unable to find cases from other jurisdictions using the "legitimate business" phrase as a privacy-related restriction, and we have been unable to find

cases from other jurisdictions distinguishing between, on the one hand, "investigation," and, on the other hand, "obtain[ing] information to prepare the affidavit in order to obtain a search warrant."

The difficult, critical, and broad general question left by the Ross decision is: What constitutional limits are there on police who, for purposes of investigating criminal activity, or corroborating their suspicions in preparation of a search warrant, go into the curtilage area of a private residence but remain at all times in areas impliedly open to the public?

The Ross majority opinion offers little guidance for answering this question. Some defense attorneys will want the Washington courts to read the decision as limiting all undercover "snooping" in impliedly open access areas on private property (whether such snooping is conducted in the daytime or the nighttime). We choose to read the opinion more narrowly, i.e., as a limit on undercover, nighttime snooping in curtilage areas near single-family residences. The Ross majority opinion seems to suggest that the deputies' visit to the garage at 8:10 p.m. to investigate a possible marijuana grow operation: 1) was legitimate police business that 2) did not invade Ross's privacy rights. The majority opinion clearly states, however, that the 12:10 a.m. visit for purposes of getting information to draft a search warrant affidavit was not legitimate police business and therefore violated Ross's Fourth Amendment privacy rights.

After reading countless Fourth Amendment cases over the past 20-plus years, but before reading the Ross majority opinion, we would have seen no difference in law between: (A) police investigating and (A) police obtaining information to prepare a search warrant affidavit. Isn't investigation for purposes of corroboration still "investigation?" We also would have questioned, based on our reading of the case law, whether there is a difference between: (A) an after-dark, 8:10 p.m. observation, and (B) an after-dark, 12:10 a.m. observation in an impliedly open access area of the curtilage of a private residence. In late March in Washington, it is just about as dark out as it is going to get by 8:10 p.m., though we would concede as a personal matter that we would not be surprised to have a neighbor come to our door at 8:10 p.m., while we would be surprised and more than a little annoyed if they came to the door after midnight without a very good reason.

Our consternation at the Ross majority opinion aside, officers must try to interpret the Ross majority's analysis. Our best guess is that the Ross majority's distinction between (A) police observations that are investigative, and (B) police observations that are directed at search warrant preparation will not survive in Washington case law in the future. What we do see developing after Ross, however, are time-of-day restrictions on undercover police entries into curtilage areas of single-family residences impliedly open to other members of the public. In other words, such areas may be impliedly open to members of the public at certain hours, but not 24 hours a day. In the future, officers who wish to make similar undercover entries into such areas under similar circumstances should be cautious about making late-night entries. When in doubt about the legality of such non-emergency, non-exigent undercover, warrantless entries, officers should carefully consider the time of the planned entry. The line is apparently drawn somewhere between 8:10 p.m. and 12:10 a.m., but only future case law development will tell exactly where.

The Ross majority opinion does not appear to restrict "knock-and-talk" and other warrantless entries into the curtilage of private property by uniformed police: a) who use a direct access route to a residence impliedly open to the public, and b) who actually attempt to make contact with the resident.

We hope to revisit Ross in a future LED as we talk to others and we further consider the decision.

"COMMUNITY CARETAKING FUNCTION" EXCEPTION DOES NOT JUSTIFY SEIZURE OF YOUNG-LOOKING TEENAGER OUT ON A SCHOOL NIGHT IN DOWNTOWN SEATTLE WITH OLDER, POSSIBLY DRUG-INVOLVED COMPANIONS

State v. Kinzy, ___ Wn.2d ___ (2000) 2000 WL 1028531

Facts and Proceedings:

At 10:10 p.m. on a school night in early March of 1998, two Seattle bicycle officers spotted Ms. Kinzy in a downtown area known for high narcotics trafficking. Ms. Kinzy was not known to the officers. She appeared to them to be between 11 and 13 years old (later investigation established she was actually 16 years old.) she was accompanied by two other teenage girls and an older male. The male was known to the officers due to prior narcotics contacts.

The officers decided that Ms. Kinzy wasn't safe in her present situation. One of the officers asked Ms. Kinzy to stop. She put her head down and kept walking away. The officer then grabbed her arm to make her stop so he could ask her questions.

Because Ms. Kinzy kept nervously putting her hand into the pockets of her coat during the questioning, the officer frisked her. During the frisk, some contraband drugs came into plain view, at which point she was arrested, leading to discovery of additional illegal drugs in a search incident to arrest. She was charged in juvenile court with unlawful possession of cocaine.

In a pre-trial suppression motion, Ms. Kinzy argued, among other things, that she was seized without lawful justification when the officer grabbed her arm to ask her what she was doing on the streets under these circumstances. The juvenile court denied her motion and found her guilty of cocaine possession. She appealed. The Court of Appeals ruled against her (see **LED** entry on the Court of Appeals decision in State v. L.K., 95 Wn. App. 686 (Div. I, 1999) **November 99 LED:18.** The Washington Supreme Court then granted her request for review.

ISSUE AND RULING: Under the Fourth Amendment to the United States Constitution, does the "community caretaking function" exception permit police officers to lawfully "seize" a 16-year-old minor without a warrant when the officers have no reason to believe the minor has committed a criminal offense, but the minor is standing on a public sidewalk in a high narcotics trafficking area on a school night with several others, including an older person believed by the officers to be associated with narcotics? (ANSWER: No, rules a 5-4 majority)

Result: Reversal of Court of Appeals decision and King County Juvenile Court judgment; charges against Loreal Monique Kinzy to be dismissed.

ANALYSIS BY MAJORITY:

Justice Smith's opinion for the majority contains the following "Summary and Conclusion":

> Under the Fourth Amendment to the United States Constitution, a "seizure" by police officers without a warrant is per se unreasonable. One exception to the warrant requirement arises when police are serving in their role as community caretakers. The community caretaking function exception may not be used as a pretext for a criminal investigation. It normally applies to police encounters involving emergency aid and routine checks on health and safety.
>
> Where, as in this case, an encounter involves a routine check on health and safety, its reasonableness depends upon a balancing of a citizen's privacy interest in freedom from police intrusion against the public's interest in having police perform a "community caretaking function." A person's interest in freedom from police intrusion increases when an encounter is elevated to the level of a "seizure." When a person has not been seized, balancing the interests usually favors the action by police. Police officers must be able to approach citizens and permissively inquire whether they will answer questions. This intrusion is minimal and reasonable in light of citizens' expectations that police will assist them in a variety of circumstances.
>
> When a person is seized, however, the intrusion no longer remains minimal. Balancing the interests will not necessarily favor action by police. When in doubt, the balance should be struck on the side of privacy because the policy of the Fourth Amendment is to minimize governmental intrusion into the lives of citizens. The community caretaking function exception should be cautiously applied because of its potential for abuse. Once the exception does apply, police may conduct a noncriminal investigation so long as it is necessary and strictly relevant to performance of the community caretaking function. The noncriminal investigation must end when reasons for initiating an encounter have been fully dispelled.
>
> In this case, the findings of fact reveal two significant events on March 3, 1998: (1) police observation of Kinzy and the decision to approach her at 10:10 p.m. and (2) [the officer's] restraint of Kinzy as she began to walk away.
>
> The first event was the starting point for a pre-seizure encounter, albeit a brief one. Balancing the interests leads to a conclusion that that encounter was reasonable. Kinzy's privacy interest in being free from police intrusion was minimal as long as there was no "seizure." Rendering aid or assistance through a health or safety check is a hallmark of the community caretaking function exception. Under the second event, the police officers had no articulable suspicion that Peitioner had committed a criminal offense. She was entitled to walk away and terminate the encounter with the police officers. Kinzy chose to walk away from the two police officers. [The officer]

> grabbed Kinzy by her arm, thus elevating the encounter to a constitutional seizure. After this, Kinzy's privacy interest in being free from police interference was no longer minimal. The officer was no longer permissively inquiring whether Kinzy would answer questions. Kinzy was compelled to answer questions to the satisfaction of the police officers. Otherwise, they would not have allowed her to leave, even when she answered their questions truthfully. In addition, the officers' detention of Kinzy was based upon facts which suggested imposition of a juvenile curfew law. Seattle has no such law. Curfew laws have not been favored because of criticism they impermissibly infringe upon a citizen's constitutional freedoms of association, expression and movement. Cautious application of the community caretaking function exception leads to our conclusion that the post-seizure action by the officers against Kinzy was unreasonable. The State's interest in protecting the safety of children did not outweigh Kinzy's interest in her constitutional freedoms of association, expression and movement.
>
> The community caretaking function exception did not justify seizure of Kinzy by the officers. Under these circumstances, this was an unconstitutional seizure which tainted all police activity which followed. The trial court should have granted Kinzy's motion to suppress evidence. With suppression of the cocaine, there would be no evidence to support the charged criminal offense under RCW 69.50.401(d).
>
> We reverse the decision of the Court of Appeals, Division I, which affirmed both the conviction of Loreal Monique Kinzy and the order of the King County Superior Court denying her motion to suppress.

["Kinzy" substituted for "Petitioner"; "the officers" or "the State" substituted for "Respondent;" officer's name is deleted.]

DISSENT:

Justice Talmadge writes a strongly worded dissenting opinion, joined by Justices Guy, Ireland and Bridge, arguing that the Kinzy decision by the majority will make it more difficult for police to justify "community caretaking" intrusions taken for non-investigatory purposes.

LED EDITORIAL COMMENT: We see Kinzy as a narrow, fact-based decision which will have little negative impact on law enforcement "community caretaking function" contacts in other factual contexts.

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BRIEF NOTE FROM THE WASHINGTON STATE SUPREME COURT

PARENT HAS CAUSE OF ACTION AGAINST DSHS FOR NEGLIGENT INVESTIGATION; NO-CONTACT ORDER DOES NOT BREAK THE CHAIN OF LEGAL CAUSATION BETWEEN DSHS'S ALLEGED NEGLIGENCE AND PARENT'S ALLEGED INJURY – In Tyner v. Department of Social and Health Services, 141 Wn.2d 68 (2000), the Washington State Supreme Court holds that a parent has a cause of action for negligent investigation of child abuse, and that the chain of legal causation is not broken by the issuance of a no-contact order.

Tyner was investigated by DSHS for allegedly abusing his children. During the course of the investigation, and after a hearing, a superior court judge issued a no-contact order prohibiting Tyner from having unsupervised contact with the children. The dependency petition was ultimately dismissed, and Tyner then sued DSHS for negligent investigation.

The Supreme Court concludes that parents, even those being investigated for abusing their children, are within the class of persons that the Legislature intended to protect with the enactment of RCW 26.44. Accordingly, DSHS owes those parents a duty of care when investigating allegations of child abuse.

The Supreme Court also holds that a "judge's no-contact order will act as superseding intervening cause, precluding liability of the State for negligent investigation, only if all material information has been presented to the court and reasonable minds could not differ as to this question." The Supreme Court concludes that in the present case, reasonable minds could differ as to whether all material information was presented to the judge at the time he issued the no-contact order, and therefore the jury verdict for the father must stand.

Justices Talmadge, Guy, and Smith dissent.

Result: Reversal of Court of Appeals' dismissal; reinstatement of King County Superior Court judgment on jury verdict in favor of Tyner.

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WASHINGTON STATE COURT OF APPEALS

NO LEGAL BASIS FOR ESTATE'S LAWSUIT WHICH AROSE FROM POLICE SHOOTING OF MAN AFTER HE POINTED RIFLE AT THEM AND AT HIS WIFE

Estate of Lee v. City of Spokane, 101 Wn. App. 158 (Div. III, 2000)

Facts: (Excerpted from Court of Appeals opinion)

> Joan Lee and Elwood Lee were married and the parents of two young children, Rhiannon and Matthew. At 2:00 a.m. on February 27, 1993, Mr. Lee was drinking at a Spokane bowling alley bar. Ms. Lee piled the two kids and the family dog in the car and drove to the bar to bring him home because she did not want him to drive drunk. Once there, she grabbed Mr. Lee's truck keys and ran off. The couple yelled at each other in the parking lot. Mr. Lee took back his keys, shoved his wife, punched her in the back and the face, and drove off, leaving Ms. Lee and the children at the bar. Ms. Lee called 911 from the bowling alley.
>
> Spokane Police Officers Benjamin Estes and Kevin Langford arrived at the bowling alley about 3:30 a.m. They interviewed Ms. Lee, concluded she was the victim of domestic violence and decided to talk to Mr. Lee. They considered a custodial arrest for fourth degree assault. And they had probable cause to arrest Mr. Lee for domestic violence.
>
> Ms. Lee told the officers she wanted her husband removed from the residence so she could take the children home. And she wanted him arrested for assaulting her. She told the officers that Mr. Lee would be at the house. Officer Estes strongly urged her to remain at the bowling alley with the children until the situation at the house was resolved. But Ms. Lee insisted on going immediately to the house.

Officers Estes and Langford arrived at the Lee house a couple of minutes before Ms. Lee and the children, and parked across the street. They could see Mr. Lee's truck in the driveway, but could not see whether he was at home.

After Ms. Lee arrived, both officers tried to persuade her to stay with her children in the car while they dealt with Mr. Lee. She refused. She took the children and approached the front door.

Ms. Lee knew Mr. Lee had access to firearms but did not fear any danger. Officer Estes realized this was not going to be a normal call.

Officer Langford took up a position on Ms. Lee's right side. Officer Estes was to her left and behind her. She tried to unlock the door with her key, but Mr. Lee held the lock in the locked position. She asked him several times to let her in. Mr. Lee responded, "get the f*** out of here . . . or two people are going to die tonight." Ms. Lee backed away, taking the children with her.

Officer Langford also started to back away from the doorway. Officer Estes stayed in position. Mr. Lee opened the door. The officers could see a rifle with the scope pointed down. Officer Estes shouted "drop the gun, drop the gun." Mr. Lee refused. Instead he raised the rifle and pointed it "directly at Officer Langford's stomach and chest area." Both officers drew their guns. Officer Estes fired once at Mr. Lee. The door closed and the porch light went out.

Police did not know Mr. Lee's condition, and so followed the procedure for dealing with a barricaded, armed suspect. They spent several hours trying unsuccessfully to contact Mr. Lee by telephone. Finally, a SWAT team entered the house and discovered Mr. Lee dead behind the front door with a bullet wound in his forehead. He appeared to have been killed instantly. His blood alcohol was 0.12 percent. He was still holding the rifle, and had three other guns and "significant ammunition" at strategic locations in the house.

Proceedings: (Excerpted from Court of Appeals opinion)

The surviving Lees filed a 42 U.S.C § 1983 action for damages against the City of Spokane, Officer Estes and Officer Langford. They alleged violations of Mr. Lee's Fourth and Fourteenth Amendment rights and violations of the survivors' substantive due process rights under the Fourteenth Amendment. Both the estate and the survivors asserted state claims of wrongful death. The survivors also claimed negligent infliction of emotional distress and outrage.

The City and the officers moved for dismissal of all claims. The court granted summary dismissal on the § 1983 claims. The court dismissed Mr. Lee's personal wrongful death claim but refused to dismiss the family's wrongful death claims. It dismissed the claim of outrage, but refused to dismiss the claim of negligent infliction of emotional distress.

ISSUES AND RULINGS: 1) Does the trial court record establish as a matter of law that there was no fact question for the civil jury and that there was no violation by police of the Fourth Amendment rights of the deceased? (ANSWER: Yes); 2) Does the trial court record establish as a matter of law that there was no fact question for the civil jury and that there was no violation of the Fourteenth Amendment due process rights of the deceased? (ANSWER: Yes); 3) Does the trial court record establish as a matter of law that the officers and city were immune from a federal civil rights suit based on the shooting of the deceased? (ANSWER: Yes); 4) Does the trial court record establish as a matter of law that there was no fact question for the civil jury on the family's state law actions

grounded in a) wrongful death, b) outrage and c) negligent infliction of emotional distress; and that the officers and their agency qualified for common law and state statutory immunity? (ANSWER: Yes).

Result: Affirmance of that part of the U.S. District Court ruling dismissing certain elements of the Lee family's claims; reversal of that part of the U.S. District Court decision declining to dismiss other elements of their claims; lawsuit thus dismissed in its entirety.

ANALYSIS: In summary form, the various issues and the Lee Court's reasons for ruling against the Lees on those issues are as follows:

1) Section 1983 federal civil rights action based on alleged Fourth Amendment violation of the rights of the deceased.

Under the Federal Civil Rights law at 42 U.S.C. section 1983, family members can sue on behalf of the deceased for a violation of his Fourth Amendment rights, but they cannot sue under the Fourth Amendment on their own behalves. The Lees' theory as to an alleged violation of Mr. Lee's Fourth Amendment rights was that the police should have done something to avoid the confrontation with Mr. Lee, not that the police actions during the confrontation were unreasonable. The Lee Court declares that the "objective reasonableness" test for a Fourth Amendment seizure looks at the reasonableness of police actions as of the moment of seizure. The settled Fourth Amendment case law on use-of-force is that the courts do not look at the reasonableness of police tactics leading up to the moment when the seizure occurred.

The Lees conceded in this case that the police acted reasonably once they were at the door confronting Mr. Lee. Therefore, there was no Fourth Amendment basis for the lawsuit, the Lee Court holds.

2) Section 1983 federal civil rights action based on alleged Fourteenth Amendment violation.

Family members may bring a section 1983 Federal civil rights action on their own behalves under the Fourteenth Amendment "due process" clause. However, the legal standard for this theory is that the police acted with "deliberate indifference" in using excessive force. The U.S. Supreme Court has held in a police chase case that this test requires proof that police engaged in "arbitrary conduct shocking to the conscience." See County of Sacramento v. Lewis, 523 U.S. 833 (1998) **July 98 LED:16**. In rejecting this theory of the Lee's, the Lee Court explains:

> Here, the police intervened on behalf of a family already in danger, both from further assault by Mr. Lee if they went home, and from the dangers of the street in the middle of the night if they did not. This is hardly "arbitrary conduct shocking to the conscience[.]"

[Citation omitted]

Along the way, the Lee Court notes three cases where courts have found police conduct to be sufficiently "shocking" to violate the "due process" standard:

> In Ward v. City of San Jose, 737 F. Supp. 1502 (N.D. Cal. 1990), aff'd in part, rev'd in part, 967 F.2d 280 (9th Cir. 1991), police entered private yards during a nighttime drug raid in a dangerous neighborhood without notifying the adjacent property owners. Ward went to investigate the activity in his yard and the police shot him. The court ruled that the officers should have taken measures to protect Ward from this danger by, at the very least, informing him of their activities.
>
> Ward gives other examples of police failing to protect citizens of danger the police themselves created. In White v. Rochford, 592 F.2d 381 (7th Cir. 1979), an officer left three children alone in an abandoned car on the side of a highway in inclement weather after taking their uncle to jail. In Wood v. Ostrander, 879 F.2d 583 (9th Cir.

1989), officers ordered the passenger out of an impounded car and left her alone in a high-crime neighborhood. She accepted a ride from a stranger who raped her.

3) Immunity of officers and city from federal civil rights liability.

On the immunity issue, the Lee Court's analysis in significant part is as follows:

> Moreover, the officers would be immune from the claims asserted here anyway.
>
> Police officers have qualified immunity from liability for civil damages for conduct that "does not violate clearly established statutory or constitutional rights of which a reasonable person would have known.'" The purpose of qualified immunity is both to protect public officials from "disabling threats of liability," and to protect the public from official abuses of power.
>
> Officer Immunity. Where the claim is unreasonable force under the Fourth Amendment, the qualified immunity inquiry is the same as on the merits of the § 1983 Fourth Amendment claim. The officer is immune from personal liability if a reasonable officer could have believed the conduct was lawful. This is so even if the exercise of force was objectively unreasonable under the circumstances immediately facing the officers or manifested a patent disregard for the rights of the family members.
>
> Officer Estes responded to a threat of deadly force with deadly force. A reasonable officer would believe this was lawful. Both officers are, therefore, immune from suit.
>
> City Immunity. The City would also be immune from suit. In order to establish a § 1983 claim against a municipality, a plaintiff must: (1) identify a specific policy or custom; (2) demonstrate that the policy was sanctioned by those responsible for making that policy; (3) demonstrate a constitutional deprivation; and (4) establish a causal connection between the custom or policy and the constitutional deprivation. The City is liable only if a constitutional deprivation resulted from a city custom or policy. If the police did not use excessive force in making the arrest, there can be no municipal liability. "If a person has suffered no constitutional injury at the hands of the individual police officer, the fact that the departmental regulations might have authorized the use of constitutionally excessive force is quite beside the point."
>
> We need not address the city policies, because we find no constitutional violation by the individual officers.

[Citations omitted]

4) State law claims and defenses.

The Lee Court also dismisses claims for a) wrongful death, b) outrage, and c) negligent infliction of emotional distress made by the Lee family under state law. There is nothing in the factual record to support these claims, the Lee Court holds. Finally, the Lee Court rules that state law defenses of common law immunity and state statutory immunity require a defense verdict for the officers and their agency.

STRIKER SPEEDY TRIAL/SPEEDY ARRAIGNMENT RULE VIOLATED WHERE ARREST WARRANT NOT TIMELY ENTERED IN STATE COMPUTER SYSTEM

State v. King, ___ Wn. App. ___ , 2 P.3d 1012 (Div. II, 2000)

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

> On July 30, 1997, King, while in custody on another matter, was interviewed by a Clark County Sheriff's deputy regarding an alleged forgery at a local store. The

deputy did not arrest King on the forgery count, but he did determine that King lived at 15212 SE 4th Street in Vancouver.

Meanwhile, in August 1997, shortly after being interviewed regarding the forgery and admitting having attempted to cash a check he suspected was stolen, King moved from his Vancouver home and entered an inpatient drug treatment program at Kitsap Recovery House in Bremerton, a state-funded program. Upon release from Kitsap Recovery House, King lived at a state-funded half-way house in Sumner.

Following completion of the drug treatment program in mid-September 1997, King secured employment at Vadis Northwest, a state contractor. Before being hired, King underwent an extensive background check, including a check of his criminal history. No warrants were discovered.

From mid-September 1997 through October 1998, King resided at a Tacoma address. King paid rent and all bills in his own name, and he filed income tax returns and paid standard payroll taxes.

An information charging King with forgery was filed on November 17, 1997. Due to a typographical error, the summons also issued that day was sent to the wrong address.

The State sent a second summons on December 6, 1997. The sheriff's office attempted service at the SE 4th Street address, but it found King no longer lived there. On the same day, the State also issued a summons for an address in Oregon. The sheriff's office had found that a Robert L. King, with the same birth date as the suspect, lived there. After attempting service at the Oregon address, authorities discovered that that King was not the person they were looking for. In January 1998, the trial court issued a warrant for King's arrest. Neither the prosecutor nor law enforcement made any efforts to locate King after issuance of the warrant.

During the summer of 1998, a Tacoma police officer, investigating a domestic violence situation that occurred at a neighboring residence, contacted King about a domestic violence situation that occurred at a neighboring residence. An officer obtained King's identification and ran a warrants check; that check came back negative.

Also in the summer of 1998, an officer stopped King for an improperly completed trip permit. A warrants check came back negative.

On January 20, 1999, King was arrested on the warrant following a routine traffic stop. King was arraigned on the forgery charge on January 27, 1999.

Following his arrest, King moved to dismiss the forgery charge, claiming a violation of his speedy trial rights because the State did not exercise due diligence in attempting to bring him before the court for arraignment. The trial court concluded that King was amenable to process and did not contribute to the delay in bringing his matter before the court. But the trial court denied King's motion, finding that the State satisfied its due diligence requirement by sending a summons to King's last known address.

At a bench trial on stipulated facts, the court found King guilty of forgery and King was found guilty of forgery. The trial court sentenced him to 22 months in a work ethic camp. The court ordered King released on his own recognizance pending the outcome of this appeal.

ISSUE AND RULING: Did the State violate the Striker speedy trial/speedy arraignment rule by failing to timely enter the arrest warrant in the state computer system, thus causing an unlawful delay in the arraignment of King? (ANSWER: Yes)

Result: Reversal of Clark County Superior Court forgery conviction of Robert King.

ANALYSIS: (Excerpted from Court of Appeals opinion):

> A 436-day delay occurred between the time the State filed the information (November 17, 1997) and King's arraignment (January 27, 1999). King argues that this constitutes a violation of his speedy trial rights as announced in State v. Striker, 87 Wn.2d 870 (1976) and its progeny.
>
> The speedy trial rule, CrR 3.3, provides time limits within which criminal defendants must be brought to trial. Although speedy trial calculations generally run from the date of arraignment, there is an exception. The Striker rule provides that the speedy trial period shall commence at the time the information was filed, instead of the arraignment date, where a "long and unnecessary delay occurs in bringing a defendant who is amenable to process before the court[.]" When the requirements of Striker are met, defendants who remain out of custody pending trial "must be brought to trial . . . [within] 104 days after the date the information was filed[.]" *[COURT'S FOOTNOTE: The 104 day period recognizes that although an out-of-custody defendant has a right to go to trial within 90 days of arraignment, the defendant's right to an arraignment hearing does not arise until 14 days after his or her initial appearance in court. CrR 3.3(c)(1).]* Failure to do so shall require dismissal of the charge with prejudice. CrR 3.3(i).
>
> We must decide whether the Striker rule is triggered in this case. Two requirements must be met. The first is that the delay not result from any fault or connivance on the defendant's part. This is not at issue here. The trial court found that King was not at fault and the State has not challenged this finding.
>
> The second requirement is that the delay must have been "long and unnecessary." A delay may be sufficiently "long" if it lasts 45 days or more. A delay is "unnecessary" if, while it was occurring, the State failed to exercise due diligence to bring the defendant before the court, and the State's failure deprived the defendant of timely notice of the charges. The State has the burden of proving due diligence, for it knows what it was doing during the relevant period.
>
> Here, the extensive delay was clearly unnecessary. After service was attempted on King in Vancouver and Oregon, the trial court issued an arrest warrant. It is apparent from the record that the warrant was not timely entered into the State computer system. On two separate occasions between issuance of the warrant, January 30, 1998, and his January 20, 1999 arrest, King's name was checked for warrants and came back negative. Had the State timely entered the warrant into its computer system, King would have been arrested during the summer and brought to trial in the fall. The failure to do so deprived King of what would have otherwise been timely notice and, under the facts of this case, demonstrates a lack of due diligence in attempting to bring King before the court.
>
> The Striker rule is thus properly invoked, and the 436-day delay between charging and arraignment violated King's speedy trial right. King's forgery conviction is reversed.

[Some citations omitted]

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BRIEF NOTES FROM THE WASHINGTON STATE COURT OF APPEALS

(1) HEARSAY STATEMENTS QUALIFY AS "EXCITED UTTERANCES" DESPITE POST-EVENT PASSAGE OF TIME AND POLICE QUESTIONING -- In State v. Williamson, 100 Wn. App. 248 (Div. III, 2000), the Court of Appeals upholds the trial court's admission of "excited utterances" hearsay in a trial for kidnapping and attempted murder.

The Williamson Court describes the facts of the case as follows:

> Michael Williamson accosted his ex-wife, Kathryn Wagner, at work. He put his arm behind Ms. Wagner's back and ordered her to get into her car. She then drove them to a campsite at the Ellensburg Canyon. Mr. Williamson repeatedly pointed a handgun at Ms. Wagner. He clicked the gun and said that this was the day she was going to meet her maker. She asked to use the bathroom. Mr. Williamson responded that he would shoot her in the back of the head and drag her body into the weeds. He told Ms. Wagner that he would shoot people and a bird near their car. She purposely dropped two earrings and some personal items at the campsite. They then drove to Mr. Williamson's house.
>
> The following morning Ms. Wagner told Mr. Williamson she had to go to work. She left but went directly to her sister and brother-in-law's house (Sandra and Chuck St. Mary). She tried to attract police by driving 70 to 80 mph. At about 8:30 a.m., she told the St. Marys that she had "just escaped" and explained what happened. She was frightened, upset, tearful, visibly shaken, and in a very agitated state. She spoke in a loud, high-pitched voice. Mr. St. Mary told Ms. Wagner that she had to get help or leave the house.
>
> Mr. St. Mary took Ms. Wagner to the Selah Police Department at approximately 9:20 a.m. She told Sergeant Arnie Belton and Sergeant Ricardo Gutierrez that she followed Mr. Williamson's instructions to avoid getting hurt. She was extremely nervous, frightened, and appeared to have been crying. She kept looking over her shoulder when she entered the police station. She wanted Mr. Williamson put in jail.
>
> Police found the earrings and personal items dropped at the campsite. They also found a .45 caliber automatic handgun in Mr. Williamson's car.

In upholding the trial court's admission of the "excited utterances" hearsay, the Williamson Court explains:

> Under the excited utterance exception to the hearsay rule, an out-of-court statement is admissible if it relates to "a startling event or condition made while the declarant was under the stress of excitement caused by the event or condition." ER 803(a)(2). An excited utterance requires three preliminary factual findings: (1) a startling event or condition, (2) a declarant under the stress of a startling event or condition, and (3) a connection to the startling event or condition. Here, the question is whether Ms. Wagner made the statements while still under the stress of the event.
>
> Spontaneity is crucial. The trial court should consider the passage of time between the startling event and the utterance. But the passage of time alone is not dispositive. Other considerations include the declarant's emotional state and

> whether the declarant had an opportunity to reflect on the event and fabricate a story. The statement need not be completely spontaneous and may be in response to a question.
>
> A later recantation does not disqualify the statement as an excited utterance. But if the witness had an opportunity to, and did fabricate a lie after the startling event and before making the statement, the statement is not an excited utterance.
>
> Here, the court heard from Ms. Wagner, Sergeant Belton, Sergeant Gutierrez, and Ms. St. Mary. It found that Ms. Wagner's oral statements to Ms. St. Mary and Sergeant Belton were excited utterances. ER 803(a)(2).
>
> Ms. St. Mary testified that Ms. Wagner arrived at her house at 8:00 or 8:30 a.m. after driving 70 to 80 mph. Ms. Wagner was upset, highly emotional, and in shock.
>
> Sergeant Belton asked Mr. St. Mary to drive Ms. Wagner to the police station. They arrived at the police station at 9:20 a.m. Ms. Wagner appeared to have been crying, and was very fearful, emotional, nervous, and excited. She continued to look over her shoulder and thanked Sergeant Belton for locking the door. She asked Sergeant Belton to guarantee that Mr. Williamson would be arrested before she gave a statement.
>
> Ms. Wagner faced a startling event, the kidnapping. Her statements were a spontaneous recitation of that event. She made the statements right after she was able to break free from her kidnapper. Her appearance was highly emotional. She acted as if she was afraid of Mr. Williamson. She made her statements while she was still under the influence of the kidnapping. The statements here were not the result of fabrication, intervening actions, or the exercise of choice or judgment.
>
> These facts amply support the trial court's finding that these statements were "excited utterances."

[Citations omitted]

Result: Affirmance of Yakima County Superior Court conviction of Michael Lee Williamson for first degree kidnapping. (NOTE: Williamson faces other possible prosecutions based on other charges for the above-described conduct.)

(2) PRE-TRIAL NO CONTACT ORDER IS INVALID IF IT FAILS TO INFORM THE RESPONDENT THAT CONSENT IS NOT A DEFENSE – In State v. Marking, 100 Wn. App. 506 (Div. II, 2000), the Court of Appeals holds that a pre-trial no-contact order is invalid if it fails to inform the respondent that consent is not a defense to a charge of violating the order.

RCW 10.99.040(4) provides that:

> The written order releasing the person charged or arrested shall contain the court's directives and shall bear the legend: 'Violation of this order is a criminal offense under chapter 10.99 RCW and will subject a violator to arrest; any assault, drive-by shooting, or reckless endangerment that is a violation of this order is a felony. You can be arrested even if any person protected by the order invites or allows you to violate the order's prohibitions. You have the sole responsibility to avoid or refrain from violating the order's provisions. Only the court can change the order.'

[Emphasis added.] The Court of Appeals holds that "shall" means "shall." Because the order at issue in the present case did not bear the mandatory language, it was invalid.

Result: Reversal of Kitsap County Superior Court conviction of Joseph C. Marking for violation of a domestic violence no contact order.

(3) PRISON INMATE'S HOMEMADE PAPER-AND-PENCIL SPEAR IS NOT A DEADLY WEAPON FOR PURPOSES OF SECOND DEGREE ASSAULT CHARGE – In State v. Skenandore, 99 Wn. App. 494 (Div. II, 2000), the Court of Appeals holds that a homemade paper-and-pencil spear was not a deadly weapon for purposes of second degree assault. The Court of Appeals also holds that a prison disciplinary proceeding is not punishment for double jeopardy purposes.

Skenandore, an inmate at the Clallam Bay Corrections Center, assaulted a corrections officer with a homemade paper and pencil spear as the officer bent to pass a sack breakfast through the cuff port. "The spear was two-and-one-half feet to three feet long, fashioned from writing paper rolled into a rigid shaft bound with dental floss, affixed to a golf pencil." The inmate struck the officer with the spear twice on the chest and once on the arm. The inmate then disassembled the spear and flushed parts of it down the toilet before additional corrections officers could arrive.

The physician's assistant at the prison examined the officer and noted that "near his left nipple, he had a mark, not a bruise but like somebody had gotten a sharp object and had stabbed the area or had pressed into the area; and above the nipple was another mark; and there was about a two inch linear mark on his left arm." The marks were red and indented but had not broken the skin. The marks faded away within two hours.

Skenandore was convicted of second degree assault and custodial assault.

The Court of Appeals begins by addressing the controlling statutory definitions:

> The crime of deadly weapon second degree assault occurs when a person assaults another with a deadly weapon without intent to inflict great bodily harm. RCW 9A.36.021(1)(c); 9A.36.011(1)(a). A weapon is "deadly" if, "under the circumstances in which it is used, . . . [it] is *readily capable* of causing death or substantial bodily harm." RCW 9A.04.110(6) (emphasis added). "'Substantial bodily harm' means bodily injury which involves a temporary but substantial disfigurement, or which causes a temporary but substantial loss or impairment of the function of any bodily part or organ, or which causes a fracture of any bodily part[.]" RCW 9A.04.110(4)(b).

The Skenandore Court relies on State v. Schilling, 77 Wn. App. 166 (1995) **Oct. 95 LED:12**, where the victim was hit on the head with a bar glass, knocking off the victim's eye glasses and causing lacerations that required stitches. The Skenandore Court notes that in reaching its conclusion that a bar glass was a deadly weapon under the facts of the case, the Schilling court observed that, "because the glass was not a per se deadly weapon, 'the inherent capacity and 'the circumstances in which it is used' determine whether the weapon is deadly. RCW 9A.04.110(6). 'Circumstances' include 'the intent and present ability of the user, the degree of force, the part of the body to which it was applied and the physical injuries inflicted.'" [Citations omitted.] The Skenandore Court concludes that:

> Although under some circumstances the spear used by Skenandore might be shown to be a deadly weapon, the record here demonstrates that it, like the glass in Schilling, is not a per se deadly weapon, as would be a long-bladed knife, for example. See RCW 9.94A.125. Thus, as in Schilling, we must look to the surrounding circumstances to assess whether the spear as used here could be said to be a deadly weapon. Unlike Schilling, there was no testimony regarding the spear's potential for substantial bodily harm had Skenandore struck [the officer] on

> the face or in the eye. Nor was the jury able to examine the spear in its completely assembled state to determine its deadly weapon capability because Skenandore had partially disassembled it and flushed at least the pencil-point down his cell toilet. The record did not reflect that [the officer's] face was near the cuff port such that the spear could have struck his eye; rather, the evidence was that [the officer] was looking through a higher vertical window off to the side as he served Skenandore breakfast through the cuff port. Moreover, the three blows all landed on [the officer's] upper torso, well below his head. The cell door that separated [the officer] and Skenandore, together with the small opening of the low cuff port, about one-third of the way from the floor, restricted the spear's movement. Thus, unlike in Schilling, the surrounding circumstances inhibited the spear's otherwise potential, but unproven, ready capability to inflict substantial bodily harm. The spear did not tear [the officer's] shirt or break his skin; and the non-abraded red indentations on [the officer's] chest faded within hours of the assault.

The Skenandore Court concludes that, given the circumstances, the homemade paper-and- pencil spear is not a deadly weapon for purposes of the second degree assault charge.

Along the way, the Skenandore Court rejects the defendant's double jeopardy challenge to the custodial assault conviction, stating that "[p]rison discipline for infraction of administrative rules does not to bar a subsequent criminal prosecution for the same conduct." [Citations omitted.]

Result: Reversal of Clallam County Superior Court second degree assault conviction against Neil Warren Skenandore; remanded for resentencing on custodial assault conviction.

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POLICE OFFICER RECOVERS $5191.05 IN DAMAGES, COSTS AND ATTORNEY FEES FOR BEING ERRONEOUSLY NAMED IN FEDERAL COURT CIVIL SUIT

In a federal court civil suit arising out of a residential entry to make a warrantless arrest in a hot pursuit situation – Cross v. City of Port Orchard (and others) (United States District Court # C00-5012RJB) - U.S. District Court Judge Robert Bryan has granted a total of $5,191.05 damages, attorney fees and costs to Port Orchard Sgt. Dennis McCarthy in Sergeant McCarthy's counter-claim for being falsely named in the lawsuit.

Judge Bryan's June 1, 2000 order granting damages, attorney fees and costs to Sgt. McCarthy describes in part the basis for the counter-claim:

> Apparently, the plaintiff erroneously named Sergeant McCarthy as a defendant in the rush to file the lawsuit to beat the statute of limitations. Sergeant McCarthy was not involved in any way in the events giving rise to this lawsuit, but his deposition was taken to ascertain this fact. When the error was verified, the plaintiff amended his complaint, deleting Sergeant McCarthy and naming [another officer]. Sergeant McCarthy argues that he was forced to defend his reputation because the local newspaper reported the allegations in the lawsuit, naming Sergeant McCarthy as a defendant. Further, Sergeant McCarthy argues that he has suffered significant stress and embarrassment.

Plaintiff Cross responded to the counter-claim by asserting only that he corrected the error as soon as possible, and that he then wrote Sgt. McCarthy a letter of apology. This was not enough to escape sanctions, Judge Bryan has ruled, granting judgment to Sgt. McCarthy as follows:

> The authority presented by the defendant supports his motion. 42 U.S.C. § 1988 provides for attorney fees to the prevailing defendant; RCW 4.24.350 provides for a counterclaim and up to $1000 as liquidated damages for a law enforcement officer named as a defendant in an unfounded lawsuit; RCW 4.84.185 provides for

> payment of reasonable expenses, including attorney fees, after an award of dismissal of an unfounded lawsuit against a law enforcement officer. Fed. R. Civ. P. 11 and 28 U.S.C. provide for sanctions against a party or his counsel for the filing of an unfounded lawsuit.
>
> …
>
> Defendant McCarthy's motion for summary judgment should be granted. Based on the federal and state law cited above, Defendant McCarthy is entitled to judgment as follows: Attorneys' fees: $4,176.00; Costs: $15.05; Liquidated damages: $1000.00. Total: $5,191.05.

Plaintiffs have appealed to the Ninth Circuit Court of Appeals from Judge Bryan's award to Sgt. McCarthy, so it probably will be some time before any payment is made.

Other issues involving other civil defendants remain in the pending proceedings in Federal District Court. The warrantless residential entry is being defended on theories of consent and hot pursuit/exigent circumstances. The City of Port Orchard and its officers are represented in the lawsuit by Joseph M. Diaz of the law firm of Davies Pearson, P.C., of Tacoma, Washington.

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INTERNET ACCESS TO COURT DECISIONS, STATUTES, AND COURT RULES

The Washington office of the Administrator for the Courts maintains a web site with appellate court information, including recent court opinions by the Court of Appeals and State Supreme Court. The address is [http:www.courts.wa.gov/]. Decisions issued in the preceding 90 days may be accessed by entering search terms, and decisions issued in the preceding 14 days may be accessed through a separate link clearly designated.

Many United States Supreme Court opinions can be accessed at [http://supct.law.cornell.edu/supct]. This web site contains all U.S. Supreme Court opinions issued since 1990 and most significant opinions of the Court issued before 1990.

A good source for easy access to relatively current Washington state agency administrative rules (including WSP equipment rules at Title 204 WAC) can be found at [http://slc.leg.wa.gov/WACBYTitle.htm]. Washington Legislation and other state government information can be accessed at [http://access.wa.gov]. Access to current Washington WAC rules, as well as RCW's current through 1999 can be accessed from the "Legislative Information" page at [http: www.leg.wa.gov/wsladm/ses.htm]. The text of acts adopted in the 2000 Washington legislature is available at the following address: [http://www.leg.wa.gov]. Look under "bill info," "house bill information/senate bill information," and use bill numbers to access information.

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