# Law Enforcement Digest

**October 2001**

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## WASHINGTON STATE SUPREME COURT

**WHEN MOTOR HOME IS BEING USED ON THE ROADS, STROUD'S "BRIGHT LINE" RULE APPLIES, AND THE ENTIRE, READILY-ACCESSIBLE PASSENGER AREA IS SUBJECT TO SEARCH INCIDENT TO CUSTODIAL ARREST OF DRIVER OR PASSENGER**

State v. Vrieling, ___ Wn.2d ___, 28 P.3d 762 (2001)

Facts and Proceedings below: (Excerpted from Supreme Court majority opinion)

> On the afternoon of July 29, 1997, police dispatch advised that a vehicle prowl had occurred in a store parking lot. Dispatch described the suspect, said that he and a female companion had left in a white Winnebago motor home, and gave the license number of the Winnebago. Shortly thereafter, Snohomish County Deputy Cervarich saw the Winnebago driving well under the speed limit and swerving over the fog line on the highway. He stopped the vehicle and asked for identification from the driver, later identified as Christina Vrieling. She gave a false name and two different false birth dates. Cervarich was unable to find a record of a driver's license using this information in Washington and, when Cervarich told the driver this, she then said she had not had a license in five years and her last license was either from Colorado or Montana. Dispatch checked and found no record in either state.
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> During this time, Deputy Cervarich returned to his vehicle trying to verify information that Vrieling provided. While he was there, Vrieling left the driver's seat, walked to the back of the motor home, and entered the bathroom.
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> Unable to verify any information provided by Vrieling, Cervarich arrested her for driving without a valid license and placed her in his patrol car. He then had the passenger in the vehicle, who also gave false information but was later identified as Christina's husband, step out of the Winnebago while Cervarich searched it. Cervarich found a loaded pistol with a full magazine along with a second magazine inside a zipped cushion in the back of the Winnebago. Dispatch informed Cervarich that the pistol had been reported stolen. Cervarich arrested Mr. Vrieling for possession of a stolen firearm.
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> Later at the police station, Christina Vrieling said that the gun was hers and she used it for target practice. Once she admitted her true identity, a criminal history check showed she had a previous felony conviction. Vrieling was charged with second degree unlawful possession of a firearm.
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> Prior to trial, she moved to suppress evidence of the pistol on the basis the search of the Winnebago was unconstitutional. The trial court denied the motion to suppress. Following a jury trial, Vrieling was convicted as charged.

ISSUE AND RULING: Was the motor home's readily-accessible passenger area, in its entirety, subject to search incident to the custodial arrest of Ms. Vrieling? (ANSWER: Yes)

Result: Affirmance of Court of Appeals decision (**see Nov 99 LED:07)** which had affirmed the Snohomish County Superior Court conviction of Christina Vrieling for second degree unlawful possession of a firearm.

ANALYSIS BY MAJORITY: (Excerpted from Supreme Court majority opinion)

In State v. Stroud, 106 Wn.2d 144 (1986) this court held that "[d]uring the arrest process, including the time immediately subsequent to the suspect's being arrested, handcuffed, and placed in a patrol car, officers should be allowed to search the passenger compartment of a vehicle for weapons or destructible evidence." However, the officers may not unlock and search a locked container or locked glove compartment without obtaining a warrant.

The rule in Stroud was specifically adopted to eliminate the need for a case by case assessment of when a warrantless search of an automobile incident to the arrest of the driver would be permissible, an approach deemed to be too burdensome for police officers in the field … [T]he bright line rule that the rest of the passenger area may be searched incident to arrest of the driver recognizes that "concerns for the safety of officers and potential destructibility of evidence do outweigh privacy interests and warrant a bright-line rule permitting limited searches."

In State v. Johnson, 128 Wn.2d 431 (1996) **[March 96 LED:06]**, this court was asked to decide whether a sleeper compartment in the cab of a tractor trailer was part of the passenger compartment subject to search incident to the driver's arrest. The defendant in Johnson claimed that the sleeper was his temporary residence, and as such was not subject to search incident to arrest. We rejected this argument, noting that the sleeper compartment was not really a home. We also observed that the defendant was asking this court to retreat from Stroud and "return to the confusion of [one of the holdings in State v. Ringer, 100 Wn.2d 686 (1983)]." We declined to do so. We noted that "[v]ehicles traveling on public highways are subject to broad regulations not applicable to fixed residences," which do not afford the defendant the "same heightened privacy protection in the sleeper that he would have in a fixed residence or home." Finally, we quoted with approval the reasoning of the Court of Appeals:

> "[W]hen a home is located in a vehicle, in such a way as to make it readily accessible from the passenger compartment, the safety of law enforcement officers and the need for a bright-line rule militate against prohibiting officers from searching a sleeping area which is readily accessible from the passenger compartment."

Under Stroud and Johnson, search of a motor home like the one involved here falls within the search incident to arrest exception to the warrant requirement. Just as in the case of the tractor trailer in Johnson, motor homes traveling the highways are heavily regulated, as is true of all vehicles, and privacy interests are thus not as great as in a fixed residence. Further, exactly as in Johnson, the back of this motor home was accessible to the driver, and therefore concerns about officer safety and the need for a bright line rule militate against prohibiting officers from searching the motor home. Also,. . . in the context of searches incident to arrest the court has "been sensitive to the reality that the passenger compartment of a vehicle may harbor weapons for an occupant, and to the exigenc[y] that an occupant could . . . drive the vehicle away." The same thing is true of a motor home.

While a different question may be presented when a motor home serves as a fixed residence **[PLEASE NOTE THIS DISTINCTION -- LED EDS.]**, we conclude that when a motor home is used as a vehicle on the road, there is no constitutionally meaningful difference between a sleeper compartment in a

> tractor-trailer [accessible through an open boot] and the back of a motor home where both are accessible to the occupants. Indeed, this case highlights the need for applying the same rule as in Stroud and Johnson. Not only was the back of the motor home accessible to the defendant, but she actually went to the back of the motor home during the time Deputy Cervarich tried to verify her identity. Threat to officer safety is one of the reasons for the search incident to arrest exception. The holdings in Stroud and Johnson recognize that officer safety is a vital concern when vehicles are stopped and occupants arrested. Unfortunately, vehicle stops are often dangerous encounters, and the search incident to arrest exception serves to lessen the danger without unduly infringing individual rights.

[Some citations and footnotes omitted]

DISSENTS:

Justice Johnson writes a dissenting opinion joined by Justices Alexander and Sanders. His dissent argues that an "immediate area" rule (also known as the "lunge area" rule or Chimel-scope rule) applicable to non-vehicle searches incident to arrest should govern searches incident to arrest where motor homes are involved.

Justice Sanders writes a separate dissent joined by no one. He apparently takes the surprising and unsupported personal view that, absent exigent circumstances or consent, officers should never make a warrantless search incident to arrest.

**WHERE DRIVER HAD LEANED OVER TOWARD FRONT-SEAT PASSENGER WHILE OFFICER WAS MAKING POST-STOP RADIO CHECK ON DRIVER DURING 1:15 A.M. STOP OF DRIVER, PASSENGER WAS SUBJECT TO LAWFUL FRISK ONCE OFFICER LEARNED AND ACTED ON INFORMATION THAT DRIVER WAS SUBJECT TO CUSTODIAL ARREST**

State v. Horrace, ___ Wn. 2d ___, 28 P.3d 753 (2001)

Facts and Proceedings below: (Excerpted from Supreme Court majority opinion)

> On May 26, 1997, at around 1:15 a.m., a Washington State trooper monitoring traffic on I-5 in Lewis County observed a northbound vehicle that appeared to be exceeding the posted speed limit of 70 m.p.h. After receiving a radar reading of 78 m.p.h., the trooper pulled the vehicle over, stopping about one car-length behind it and illuminating its interior with the spotlight on his patrol car. The streetlights for the off ramp in the distance were too far away to be of any benefit. Defendant Ronald Horrace, the only passenger, was seated in the right front passenger seat. The trooper approached on the passenger side of the vehicle, away from the traffic, and asked the driver for identification. The driver produced a Washington driver's license that had a hole punched in it, indicating that he had been stopped before and was driving on a suspended license, a circumstance he admitted. Thinking Horrace could drive the vehicle away and eliminate the need to impound it, the trooper asked Horrace if he had a valid driver's license. As Horrace took out his license, the trooper could see inside Horrace's oversized wallet.
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> From the radio check, the trooper learned that Horrace's license was valid, that the driver was driving with a suspended license, and that there were several outstanding warrants for the driver's arrest. While waiting for the results of the radio check, the trooper observed the driver leaning to his right, tipping his right shoulder down, as though he were "doing something down between the seats." The driver's "movements toward the center console of the vehicle and in [Horrace's] direction" concerned the trooper. The trooper believed that the driver

"could have been retrieving a weapon for when [he] went back up there or concealing a weapon." Returning to the vehicle and placing the driver under arrest, the trooper asked him "what all the movement was up there," and the driver responded, "My butt itches, I was scratching it."

After placing the driver in his patrol car, the trooper returned to the passenger side of the vehicle, asked Horrace to step out, and told him he "was going to pat him down for weapons." Although the driver's movements had initially caused the trooper more concern, he had also been concerned about the passenger. The trooper wanted to do the pat-down search because of the driver's movements, which had raised the possibility of a concealed weapon, and because of Horrace's "close proximity to the console area where the gestures were being made." The trooper observed that it would have been "easy to conceal something behind or inside" Horrace's heavy leather jacket with its numerous pockets.

Prior to the pat-down search, the trooper asked Horrace if he had any guns, knives, or needles on his person, and Horrace said he did not. The trooper "felt a large bulge in [Horrace's] left breast pocket area of the jacket." When asked about it, Horrace identified it as "some stuff." From the pocket, the trooper removed two walnut shells, a piece of cloth, and a small, leather, zippered container that the trooper described as cylindrical and "very heavy and hard feeling." The trooper unzipped the container and found a number of bullets. The trooper asked Horrace several times whether he was carrying a gun, and Horrace repeatedly said he was not. Continuing the pat-down search, the trooper found a loaded pistol magazine in Horrace's lower-left jacket pocket. When the trooper asked where the gun was, Horrace said it was under the seat. The trooper stepped forward and looked under the passenger seat, where he saw the gun lying on the floor. The trooper asked Horrace if he had a concealed weapons permit, and Horrace said he did not. Without retrieving the gun, the trooper continued his pat-down search. Horrace told the trooper that he had a knife, and the trooper removed a switchblade from the right front pocket of Horrace's pants. The trooper arrested and handcuffed Horrace. Continuing the search, the trooper found in Horrace's pants pocket a small pipe that smelled of marijuana. The trooper then opened Horrace's wallet without removing it from the chain attaching it to a belt loop. Inside the wallet was a small plastic bag containing a tan-colored powder later identified as methamphetamine. Because the trooper had not seen the plastic bag in Horrace's wallet earlier when Horrace had produced his driver's license, the trooper asked him where the bag had come from, and Horrace answered, "'Mike gave it to me, he figured he was going to jail.'"

Horrace was charged with possession of methamphetamine while armed with a firearm. A second count, unlawful possession of a firearm in the second degree, was dismissed prior to trial. The trial court denied Horrace's pretrial motion to suppress evidence of the methamphetamine seized pursuant to the warrantless search. At trial, Horrace testified that, while the trooper was running the radio check, the driver was "moving around digging" between the seats for "[m]ore than a minute" and had been "trying to hide stuff." Horrace maintained that the driver had slipped the methamphetamine into his wallet as it lay open in his lap. The jury returned a verdict of guilty as charged and found that Horrace was armed with a firearm at the time of the commission of the crime.

ISSUE AND RULING: Under the frisk standard of Terry v. Ohio, did the trooper base his pat-down search of Horrace, a vehicle passenger, on specific, articulable facts supporting an

objectively reasonable belief that Horrace was armed and dangerous? (ANSWER: Yes, rules a 5-3 majority)

Result: Affirmance of Court of Appeals decision affirming Lewis County Superior Court conviction of Ronald J. Horrace for possession of methamphetamine while armed with a firearm.

ANALYSIS BY MAJORITY: (Excerpted from Supreme Court majority opinion)

> Under Terry, to justify the intrusion of a limited pat-down search, "the police officer must be able to point to specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant that intrusion." The Terry court held that "where a police officer observes unusual conduct which leads him reasonably to conclude in light of his experience that criminal activity may be afoot and that the persons with whom he is dealing may be armed and presently dangerous . . . , he is entitled for the protection of himself and others in the area to conduct a carefully limited search of the outer clothing of such persons in an attempt to discover weapons which might be used to assault him."
>
> The trooper testified that three particular observations gave rise to his belief that Horrace was armed and presently dangerous: the driver was making unexplained movements between the seats and in Horrace's direction, Horrace was in close proximity to those movements, and Horrace was wearing a bulky, zippered jacket. The trooper observed the driver leaning to his right, dropping his right shoulder down, and "doing something" in the console area between the bucket seats and "in [Horrace's] direction." From the trooper's perspective, the driver's movements were consistent with an attempt to conceal something, possibly a weapon. Although the trooper saw no movement from Horrace, the driver's movements had drawn his attention to Horrace and raised the concern that the driver had concealed a weapon inside or behind Horrace's jacket.
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> We cannot conclude that the trooper's objective, undisputed facts were insufficient or that his inferences were irrational. In [State v. Kennedy, 107 Wn.2d 1 (1986)] we determined that, after a driver (Kennedy) was signaled to pull over, his movement in "lean[ing] forward as if to put something under the seat" was "sufficient to give [the officer] an objective suspicion that Kennedy was secreting something under the front seat of the car," and we noted that the officer "had no way of knowing what Kennedy was hiding." We observed that the officer "could have" frisked Kennedy (who was not under arrest but only under investigation) "had he suspected Kennedy might be armed." However, because the officer inferred from Kennedy's movement that a weapon had possibly been concealed under Kennedy's seat, the officer permissibly directed his limited, protective search to that area.
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> Having agreed in Kennedy that the driver's forward lean was sufficient to arouse the officer's suspicion that a weapon had been concealed, we recognize in the present case that the more extensive movements of the driver could have caused the trooper to suspect concealment of a weapon. And just as the officer in Kennedy reasonably directed his weapons search to the place where the driver had reached (that is, beneath the driver's seat), the trooper in the present case concluded that, given the driver's pronounced movements in Horrace's direction, the driver could have concealed a weapon in or behind Horrace's jacket. Indeed, when the trooper asked the driver about the movements, the trooper received a flippant, obviously evasive answer that did nothing to allay his fears. To satisfy Terry, an "'officer need not be absolutely certain that the individual is armed; the issue is whether a reasonably prudent man in the circumstances would be warranted in the belief that his safety or that of others

was in danger.'" In light of the analysis in Kennedy, we conclude that in the present case the trooper's protective pat-down search of Horrace was based, as Terry requires, on specific, objective facts and the rational inferences drawn from those facts. Challenging none of the facts that the trooper relied on, Horrace asserts that, because the trooper discerned no movement on Horrace's part, Horrace could not have been subjected to a Terry frisk. This argument rests on the assumption that the driver could not have passed a weapon to Horrace or concealed one in Horrace's jacket without causing Horrace to make some movement observable to the trooper. We cannot agree with Horrace that his apparent motionlessness in the face of the driver's movements in his direction immunized him from suspicion. As evident from the circumstances in Terry, officers in the field must routinely look at the potentially criminal roles of individuals in context, not in isolation. The trooper could not reasonably have been expected to risk his personal safety on his power to divine whether Horrace was innocently, coincidentally looking the other way or was simply feigning detachment as the driver concealed a weapon on him. We thus find more reasonable the trooper's assumption that the transfer of a weapon could have occurred without any detectable movement by Horrace.

Consistent with Horrace's argument that the absence of any noticeable movement on his part shielded him from suspicion, he maintains that he was searched simply because he was present in the vehicle of an arrested driver. Clearly, just as a person's "'mere presence' at a private residence being searched pursuant to a search warrant cannot justify a frisk of [that] person," passengers in a vehicle to be searched incident to the driver's arrest cannot automatically be subjected to a pat-down for weapons. The Terry standard must be met, and that standard requires that the well-founded suspicion be directed at the particular individual to be searched. Here, specific facts cast suspicion on Horrace. It was undisputed that the driver's movements were made in Horrace's direction and that Horrace was in close proximity to the suspicious movements. Additionally, the trooper testified that he was concerned that the driver had concealed a weapon in Horrace's jacket. These facts negate Horrace's claim that the trooper's pat-down search was part of a general, routine (and plainly impermissible) practice of patting down passengers after the driver's arrest.

Finally, because Terry provides that the trial court "must evaluate the reasonableness of a particular search or seizure in light of the particular circumstances," both the trial court and the Court of Appeals cited the time of day as a factor contributing to the reasonableness of the trooper's protective search. As to the timing of a Terry stop-and-frisk, we have previously stated that, while the timing may not always be of significance, it is significant when a stop occurs in the early morning darkness. Not only does "[t]he darkness ma[k]e it more difficult for [the officer] to get a clear view into the car," but "an individual who has been stopped may be more willing to commit violence against a police officer at a time when few people are likely to be present to witness it." Because the special dangers posed by an early morning stop "are proper considerations for a reasonably careful police officer," the trial court and Court of Appeals in the present case appropriately regarded the time of day as an additional factor supporting the reasonableness of the trooper's decision.

[Some citations and footnotes omitted]

DISSENT:

Justice Sanders authors a dissent joined by Justices Alexander and Johnson, arguing that the Court should have held that the circumstances did not justify the frisk of the passenger.

**LIGHT SHED ON SEARCH ISSUES OF 1) VOLUNTARY ABANDONMENT, 2) MENDEZ-BASED ORDER TO PASSENGER TO STAY IN VEHICLE, AND 3) KNOWLEDGE ELEMENT OF PARKER "SEARCH INCIDENT" RULE RE NON-ARRESTED PERSON'S EFFECTS**

State v. Reynolds, 144 Wn.2d 282 (2001)

Facts and Proceedings below: (Excerpted from Supreme Court opinion)

> At approximately 5:40 p.m. on May 2, 1997, Pe Ell Deputy Marshall Kurt Wetzold was monitoring traffic on North Main Street in Pe Ell when he observed a southbound vehicle with a cracked windshield. After stopping the vehicle, Deputy Wetzold explained to its driver, Sarah Rogers, the reason for the stop. As he spoke with Rogers, Deputy Wetzold noticed a green coat lying on the passenger side floorboard in front of Reynolds, the vehicle's only passenger. After learning through dispatch that Rogers was driving with a suspended license, Deputy Wetzold returned to the vehicle, advised Rogers that she was under arrest, asked her to step from the vehicle, and escorted her to his patrol car. As Deputy Wetzold was speaking with Rogers at the rear of his patrol car, prior to handcuffing her, Reynolds stepped from the vehicle, and Deputy Wetzold "asked him to please remain within the vehicle until [he] was done with Ms. Rogers."
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> After Wetzold patted Rogers down, handcuffed her, and placed her in the rear seat of his patrol car, he returned to the driver's side of the Rogers vehicle, told Reynolds through the driver's window that he needed to search the vehicle, and asked him to step out. Deputy Wetzold then saw that the green coat was no longer on the passenger side floorboard. Circling around to the other side of the vehicle, Deputy Wetzold then noticed that the coat was lying on the ground, "stuffed underneath the passenger side of the vehicle." Although it had been raining intermittently prior to the stop and at times heavily during the stop, the coat was dry; nor did it appear that the coat had been run over by the car, despite the coat's position behind the front tire. When asked about the coat, Reynolds "replied that the coat was not his and that he did not put it under the vehicle." Deputy Wetzold searched the coat and found a white powdery substance and drug paraphernalia. After arresting Reynolds for possession of drug paraphernalia, Deputy Wetzold read Reynolds his Miranda rights, handcuffed him, and placed him in the rear of the patrol car. When the powdery substance yielded a positive field test for the presence of a controlled substance, Deputy Wetzold told Reynolds he was under arrest for possession of a controlled substance. In an amended information, Reynolds was charged with possession of methamphetamine in violation of RCW 69.50.401.
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> Reynolds moved to suppress the evidence recovered in the search of the coat, but the trial court denied the CrR 3.6 motion. The court found that Deputy Wetzold had probable cause to stop the vehicle and had the right thereafter to check the driver's status, arrest the driver on the criminal traffic offense, and search the vehicle incident to that arrest. Regarding the search of the green coat, the trial court reached the following conclusion:
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> > There is no expectation of privacy in the coat because the defendant denied owning the coat, and because it was found

> underneath the vehicle not inside the vehicle. Therefore, the officer had a right to search the coat as it was a found item. The Court declined to decide whether or not the search of the coat was incident to a search of the vehicle.
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> Having stipulated to the facts found at the suppression hearing, Reynolds was found guilty in a nonjury trial.

ISSUE AND RULING: Did Reynolds involuntarily abandon the coat, i.e., did he abandon the coat in response to unlawful police conduct? (ANSWER: No, there is insufficient evidence in the record to support Reynolds' claim that he put the coat under the car after the officer ordered him back into the vehicle, so his challenge fails for this reason, if not due to other legal defects in his challenge).

Result: Affirmance by unanimous decision of unpublished Court of Appeals decision which had affirmed a Lewis County Superior Court conviction of Jody Ira Reynolds for possession of methamphetamine.

ANALYSIS:

The Supreme Court opinion begins its analysis with the following discussion of the law relating to citizen claims of involuntary abandonment of personal property:

> Needing neither a warrant nor probable cause, law enforcement officers may retrieve and search voluntarily abandoned property without implicating an individual's rights under the Fourth Amendment or under article I, section 7 of our state constitution. However, property cannot be deemed voluntarily abandoned (and thus subject to search) if a person abandons it because of unlawful police conduct. This is consistent with the principle that "[e]vidence produced as the result of an unlawful seizure is not admissible against an accused." Consequently, where a defendant abandoned property and that property was subsequently searched, the defendant may assert a constitutionally protected privacy interest only upon a showing that he or she involuntarily abandoned the property in response to illegal police conduct. To establish that the abandonment of the searched property was involuntary, a defendant must therefore show two elements: "(1) unlawful police conduct and (2) a causal nexus between the unlawful conduct and the abandonment."

Defendant Reynolds based his argument that he involuntarily abandoned the green jacket on the fact that the law enforcement officer had ordered him to get back into the vehicle. The Supreme Court rejects his argument, primarily because there was no evidence or trial court finding that he abandoned the jacket after (as opposed to before) the officer ordered him back into the car.

In addition, the Supreme Court indicates, though without expressly so holding, the officer was reasonably justified in ordering passenger Reynolds back into the vehicle under State v. Mendez, 137 Wn.2d 208 (1999) **March 99 LED:04**. Mendez held that officers have full discretion to order lawfully stopped drivers out of or back into their cars. But, as to **non-violator passengers**, officers must be able to articulate objective evidence supporting a "heightened awareness of danger" in order to justify an ordering such passengers out of or back into cars. The Reynolds Court appears to suggest that the Mendez standard was met by the facts that the officer: 1) was dealing with persons unfamiliar to him, 2) was outnumbered 2-1, and 3) had just custodially arrested one of those persons. Again, however, because the evidence indicated that Reynolds abandoned the jacket before the officer ordered him back into the car, the Reynolds Court chooses not to tie its decision to Mendez.

**LED EDITORIAL COMMENTS:**

**1) "Know vs. should know" issue under Parker's "search incident" rule touched upon.**

**In dicta (language not necessary to support the Court's opinion), the Reynolds Court addresses the restriction under State v. Parker, 139 Wn.2d 486 (1999) Dec 99 LED:13, limiting motor vehicle "search incident" of non-arrested passenger's effects. While the Reynolds case did not involve "search incident" issues, the Reynolds Court does offer its view that the restriction on officers under the Parker rule is limited to personal effects the officer "knows" (as opposed to "should know") belong to non-arrested passengers.**

**2) Reynolds does not address what constitutes "abandonment".**

**While the Reynolds Court addresses the distinction between "voluntary" and "involuntary" abandonment of personal effects, the Court does not address what constitutes "abandonment." "Abandonment" of personal property under search-and-seizure case law in Washington is not fully developed, and the case law here and elsewhere is not wholly consistent. The following two paragraphs provide our best guess at the Washington rule regarding "abandonment" of personal effects in police contact situations.**

**"Abandonment" in the search-and-seizure context (which turns on temporary waiver of privacy rights") is generally broader than in the strict property-rights sense (which turns on permanent extinguishing of ownership rights). Thus, if a person intentionally discards personal property (often this occurs at the outset of a police contact) or if a person intentionally and voluntarily leaves personal property in a place other than on his or her own premises, under circumstances where it is likely that a stranger might come along and take or inspect the contents of the item, then the person (who may still legally own the item at that point) has probably "abandoned" it for search-and-seizure-privacy-rights purposes. Also generally, if a person disclaims ownership of an item upon police questioning, courts often hold that the person has waived any reasonable expectation of privacy in this item.**

**On the other hand, if a person has inadvertently mislaid or lost an item, the courts may hold that the person did nothing that can be deemed to be a waiver of privacy rights. See State v. Kealey, 80 Wn. App. 162 (Div. II, 1995) May 96 LED:05 (purse inadvertently left be hind at a store was not "abandoned").**

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## BRIEF NOTES FROM THE WASHINGTON STATE SUPREME COURT

**(1) EXCLUSIONARY RULE APPLIES WHERE EVIDENCE IS OBTAINED BY OTHER-STATE'S OFFICER IN WASHINGTON ARREST WHICH IS NOT EXPRESSLY AUTHORIZED BY RCW'S** -- In State v. Barker, 143 Wn.2d 915 (2001), the Washington Supreme Court reverses a Court of Appeals decision and holds that, where evidence was obtained as the result of an arrest by an out-of-state officer not statutorily authorized to make arrests in Washington, the Washington constitution, article 1, section 7, requires that the evidence be suppressed.

The Barker case involved a 1996 pursuit of a speeding and apparently reckless driver. In pursuit from Oregon into Washington was Officer Wall of the Oregon State Police (OSP). OSP Officer Wall was not able to effect seizure until after proceeding into Washington. Division Two of the Court of Appeals held in Barker that the OSP officer, who was "specially commissioned" by the Washington State Patrol (WSP) to act in Washington, had no Washington enforcement authority under RCW 10.93.090 (of the Washington Mutual Aid Peace Officer Powers Act),

because she lacked a Washington training certificate. See State v. Barker, 98 Wn. App. 439 (Div. II, 1999) **April 2000 LED:08**.

It was Division Two's view that, even though, by virtue of the OSP-WSP agreement, the OSP officer had the status of a "specially commissioned Washington peace officer," she lacked authority to make an arrest in Washington. Division Two held that the prosecutor was required to, and could not, show that the OSP officer had "successfully completed a course of basic training prescribed or approved for such officers by the Washington state criminal justice training commission," as required under RCW 10.93.090.

Division Two thus concluded that, regardless of the type of training an officer has in fact received, such prior CJTC approval of the training is a prerequisite to the exercise of Washington enforcement authority under RCW 10.93.090. Division Two went on, however, to hold that, because the officer had probable cause to support the arrest, the lack of statutory authority to make the arrest did not require suppression of the evidence.

The Washington Supreme Court disagrees with Division Two on the exclusion question. Due to prior procedural developments in the case, the Washington Supreme Court simply assumes, while apparently reserving the question for review in a future case, that Division Two was correct in its conclusion that the Oregon officer lacked arrest authority under RCW 10.93.090 when she made the arrest. The Court then devotes its analysis to the exclusion-of-evidence question. As noted above, the Supreme Court rules that, where an other-state officer obtains evidence in making an arrest in Washington which is not expressly authorized by Washington statute, the evidence must be suppressed.

Result: Reversal of Court of Appeals decision which had reversed suppression order of he Clark County Superior Court in the DUI prosecution of Todd D. Barker; suppression order reinstated.

**LED EDITORIAL NOTES AND COMMENTS:**

**1. We think that Division Two misinterpreted RCW 10.93.090 of the Mutual Aid Peace Officer Powers Act as limiting both extra-territorial and intra-territorial actions of specially commissioned officers, but beware.**

**In the April 2000 LED at pages 9-10, we explained, in analysis we will not repeat in full here, our view that Division Two failed to understand that RCW 10.93.090 addresses only extra-territorial actions of specially commissioned officers. Since WSP has statewide authority, we think the OSP officer should have been held to have authority to make an arrest in Washington despite the lack of approval (as of 1996) of her training by CJTC.**

**But beware. The only published Washington appellate opinion analyzing this point is the 1999 opinion of Division Two in Barker. The logic (or illogic) of the Division Two opinion would extend beyond RCW 10.93.090 and the "specially commissioned Washington peace officer" addressed there. The analysis may extend also to RCW 10.93.070 governing "general authority Washington peace officers." Accordingly, Washington law enforcement agencies may want to seek advice from their local prosecutors/legal advisors as to whether the agencies should permit officers to make any arrests (whether in or out of the territorial jurisdiction of the agency) without first having successfully completed CJTC-approved training per RCW 10.93.070 (governing general authority officers) or RCW 10.93.090 (governing specially commissioned officers).**

**2. CJTC has approved basic training programs for Oregon and Idaho general authority officers.**

**After Division Two announced its Barker decision, the CJTC reviewed and approved, for purposes of RCW 10.93.090, the separate basic training programs for: (1) OSP officers trained at the OSP Police Recruit School; (2) other Oregon officers trained at the basic academy conducted by the Oregon Board on Public Safety Standards and Training; and (3) officers trained at the basic academy conducted by the Idaho Peace Officers Standards and Training Board (the Idaho agency provides basic training for both officers of the Idaho State Police and the other law enforcement agencies in Idaho). As to trained officers from these other-state agencies, the Barker decision should no longer present an impediment to Washington enforcement authority for the officers, so long as they have been specially commissioned by a general authority Washington law enforcement agency.**

**3. "Interstate Fresh Pursuit" law at RCW 10.89.050, as amended in 1998, would have authorized the OSP officer's arrest under the Barker circumstances.**

**As we pointed out in the April 2000 LED at page 10, the Washington Legislature expanded the "fresh pursuit" authority of other-state officers in 1998 to include pursuit into Washington of persons suspected of "driving while intoxicated, driving under the influence of drugs or alcohol, driving while impaired, or reckless driving." *See* Laws of 1998, ch. 205, § 2 amending RCW 10.89.050. Had this 1998 amendment been in effect when the pursuit in Barker occurred, the issue raised in that case, i.e., whether the OSP officer had authority under RCW 10.93.090, likely would have been obviated and the arrest upheld under RCW 10.89.050. The Supreme Court so indicates in a footnote in the Barker decision.**

**Note, however, as pointed out in the April 2000 LED at pages 10-11, that the Oregon and Idaho legislatures have not yet reciprocally amended their laws on interstate fresh pursuit to allow Washington officers to pursue and arrest non-felons in their states. (The referenced note in the April 2000 LED not only comments on interstate fresh pursuit but also briefly explains extradition requirements which apply where fresh pursuit and extraterritorial arrest is permitted interstate.)**

**4. "Citizen's Arrest" authority was not discussed in either of the Barker decisions.**

**There is some discussion in the 1999 Division Two opinion regarding whether an officer outside his or her territorial jurisdiction, and not in lawful "fresh pursuit," might in some circumstances have "citizen's arrest" authority. This discussion includes citation to State v. Harp, 13 Wn. App. 239 (1975). Harp held that a city officer who made a Washington arrest outside the city could properly arrest for a felony "as a private citizen." We think that Harp is still good law, but discussion in both the Division Two opinion and the Supreme Court opinion in Barker suggest that the law is unsettled on this question. For this and other reasons, we don't recommend that officers ever rely on citizen's arrest authority when acting in their official capacities.**

**(2) FEDERAL "PINKERTON DOCTRINE" ON ACCOMPLICE LIABILITY IN CONSPIRACY CASES DOES NOT APPLY UNDER RCW'S** - In State v. Stein, 144 Wn.2d 236 (2001), the Supreme Court reverses Jack Stein's multiple convictions based on trial court error in instructing the jury on accomplice liability.

Stein was prosecuted for conspiracy to commit murder, along with the crimes of aggravated first degree murder, felony first degree murder, attempted first degree murder (three counts), and first degree burglary (one count). In a jury trial, he was convicted on all three attempted first degree murder counts and on the burglary count. He was acquitted on the other counts. On appeal, Stein argued that the jury instructions relating to accomplice liability were erroneous.

The Supreme Court agrees with Stein's challenge to the accomplice instructions, and the Court therefore reverses his convictions and remands his case for a new trial.

The trial court instructed the jury on accomplice liability consistent with RCW 9A.08.020. In addition, however, the trial court advised the jury that it could impose accomplice liability under the following additional circumstances:

> Instruction 18 A person is also legally accountable for the conduct of another person when the defendant is a *co-conspirator* of such other person, and the acts or conduct of the other person are *a reasonably foreseeable consequence of the unlawful agreement*.
>
> Instruction 19 When a defendant, with intent that conduct constituting a crime be performed, agrees with one or more persons to engage in or cause the performance of such conduct, he becomes a member of a *conspiracy*, and continues to be a member of such conspiracy, and is responsible for all the acts of all members of the conspiracy regardless of whether or not he met or conversed with all the other members of the conspiracy, and regardless of whether or not he had knowledge of the commission of such acts by other members of the conspiracy, so long as the acts of the other members of the conspiracy were *reasonably foreseeable* as acts done in furtherance of the agreement.

[Italics added by LED Eds.]

The Stein Court notes that the instructions set out above derive from what is known as the "Pinkerton doctrine." That doctrine gets its name from an interpretation of federal law by the U.S. Supreme Court in Pinkerton v. U.S., 328 U.S. 640 (1946). In Pinkerton, the U.S. Supreme Court held that a defendant is responsible for reasonably forseeable acts committed by coconspirators. In salient part, the Stein Court's explanation why the Pinkerton doctrine does not apply under Washington law, and therefore does not support the instruction given by the trial court in Stein, is as follows:

> Instructions 18 and 19 allowed the jurors to convict Stein if the evidence showed that he conspired to intimidate Hall and the murder attempts were in furtherance of the conspiracy. Thus, the jury could have found Stein guilty of the murder attempts perpetrated by his coconspirators even in the absence of proof that he knew of those attempts. However, under Washington law, a person is an accomplice only if he or she solicits, commands, encourages, or requests the commission of a crime "[w]ith knowledge that it will promote or facilitate the commission of *the* crime." RCW 9A.08.020(3)(a) (emphasis added).
>
> This Court held recently that the use of the phrase "a crime" in jury instructions instead of "the crime," as used in the statute, impermissibly establishes strict liability for any crime committed by the principal, contrary to legislative intent. State v. Roberts, 142 Wn.2d 471 (2000). See also State v. Cronin, 142 Wn.2d 568, 579 (2000) (adhering to the Roberts decision). In those cases, we held the jury instructions to be legally defective because each allowed the jury to convict the defendant if he had general knowledge of *any* crime rather than requiring knowledge of *the crime charged*. Clearly then, under this court's holdings in Roberts and Cronin, the accomplice liability statute, RCW 9A.08.020, requires knowledge of "the" specific crime, and not merely any foreseeable crime committed as a result of the complicity.

> In contrast, the instructions here, taken as a whole, enabled the jury to convict Stein of conspiratorial liability for attempted murder without finding the necessary element of knowledge that his coconspirators intended to murder the victim. Further, since liability under the Pinkerton doctrine requires no such knowledge, it is directly contrary to the holding of Roberts and Cronin and is therefore incompatible with Washington law. The trial court thus erred in instructing the jury that they could find the defendant guilty of a substantive crime committed by his coconspirators merely because that crime was foreseeable.

[Some citations and footnotes omitted]

Result: Reversal of Clark County Superior Court convictions of John Kenneth Stein, aka Jack Stein, for attempted first degree murder (three counts) and first degree burglary (one count); remand to that court for re-trial.

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## WASHINGTON STATE COURT OF APPEALS

**UNDER PARKER MV "SEARCH INCIDENT" RULE, WHERE THERE IS CONFUSION OVER OWNERSHIP OF ITEMS IN PASSENGER AREA, OFFICERS MAY SEARCH ITEMS FOR ID**

State v. Jackson, ___ Wn. App. ___, 27 P.3d 689 (Div. I, 2001)

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

> On October 5, 1999, Everett Police Officer Reide, while on patrol, proactively searched for criminal activity by randomly running searches on vehicle license plates. Officer Reide ran the plates for a vehicle parked at a motel and records indicated there was an arrest warrant for the registered owner, Michael Cooper. Officer Reide observed two men, Cooper and Christopher Jackson, exit the motel office. Cooper matched the description on the warrant. Before Officer Reide had an opportunity to stop Cooper, he drove away accompanied by Jackson in the passenger's seat. When Cooper turned right out of the parking lot he did not use his turn signal. Officer Reide stopped the vehicle and verified that Cooper was the person sought in the warrant and arrested him.
>
> While Officer Reide dealt with Cooper, Officer Sparks dealt with Jackson. Jackson asked Officer Sparks if he was free to leave and could he drive Cooper's vehicle. However, when asked about his driver's license status, Jackson stated it was suspended. Officer Sparks verified that Jackson's license was suspended and there were no warrants for his arrest. Officer Sparks told Jackson to exit the vehicle as he was free to leave but he could not drive Cooper's vehicle since his license was suspended.
>
> After exiting the vehicle, Jackson asked to get his belongings out of the car. Officer Sparks had Jackson clarify his request and Jackson stated that the brown leather jacket in the back seat was his. He did not request any other items.
>
> Officer Reide asked Cooper if anything in the car belonged to Jackson. Cooper replied no. The officer specifically asked Cooper about a brown leather jacket on the seat of the car and Cooper said he thought it was his own.
>
> The officers were confused over the ownership of the jacket. Officer Sparks removed the jacket from the car and checked the pockets for identifying

information, weapons, and contraband. Officer Sparks found a rock of crack cocaine. Officer Sparks held up the jacket so Cooper could see it and Cooper said the jacket was not his. Jackson told Officer Sparks the jacket belonged to his girl friend. Officer Sparks noted that the jacket did not appear to be a woman's jacket. He then arrested Jackson for possession of cocaine. The officers found additional cocaine on Jackson in a search incident to arrest.

Prior to trial, Jackson sought to suppress the cocaine discovery as the fruit of an unlawful search. A jury convicted Jackson of possession of cocaine.

ISSUE AND RULING: Under the motor vehicle "search incident" rule of State v. Parker, were officers permitted in these confusing circumstances of disputed ownership to search the pockets of the jacket to determine ownership of the jacket? (ANSWER: Yes)

Result: Affirmance of King County Superior Court conviction of Christopher Michael Jackson for possession of cocaine.

ANALYSIS: (Excerpted from Court of Appeals opinion)

> Where police officers arrest the driver of a vehicle they may lawfully search the passenger compartment of the vehicle incident to that arrest. *[COURT'S FOOTNOTE: State v. Parker, 139 Wn.2d 486, 505, 987 P.2d 73 (1999)* ***Dec 99 LED:13*** *(citing State v. Stroud, 106 Wn.2d 144, 720 P.2d 436 (1986)). Jackson does not claim that this was a pretextual stop in violation of the constitution under State v. Ladson, 138 Wn.2d 343 (1999)* ***Sept 99 LED:05****.]* In State v. Parker, the court held that police officers may assume all containers in the vehicle are lawfully subject to search unless the officers know or should know that certain containers within the vehicle belong to nonarrested occupants of the vehicle. Containers the police officers know or should know belong to nonarrested occupants may not be searched unless there is an independent objective basis to believe the containers hold a weapon or evidence.
>
> The issue here is whether the officer *should have known* that the jacket belonged to Jackson and therefore he was not entitled to search the jacket. At the suppression hearing the court expressly found that there was confusion over the ownership of the jacket. When confusion existed over the jacket's ownership, Officer Sparks checked the pockets of the jacket for identifying information, weapons, or contraband. Only then did Officer Sparks show the jacket to Cooper who stated it was not his. The question thus becomes one of whether under the "should know" language of Parker the officers were obligated to show the jacket to Cooper and verify his claim of ownership before they were entitled to search the jacket.
>
> As a policy matter, we believe allowing police officers to investigate the item themselves where there is genuine confusion over whether it belongs to a nonarrested passenger is the better rule.
>
> The Parker rule has the practical effect of making searches of passenger compartments much more complicated than they would otherwise be. It may also increase threats to officer safety.
>
> Moreover, the utility of showing items to the driver will be undermined where drivers have an interest in denying ownership in order to avoid liability for contraband which they can empower the passenger to remove.

> Accordingly, the police officers here were not obligated to first show the jacket to Cooper. Items of confused ownership should be included among those items police officers may lawfully assume are subject to inspection.

[Some footnotes and citations omitted; italics added]

**LED EDITORIAL COMMENT:**

**1) Parker personal effects test -- know vs. should know.**

**The Jackson Court assumes that the Parker test for searching containers or other personal effects of passengers is whether officers "should know" (a reasonableness test) the containers or effects belong to the passenger, not whether the officers "know" that fact. Recently, the Washington Supreme Court declared in pro-state dicta (language not necessary to support the Court's decision on a dispositive issue) that the Parker test is "know," not "should know." See Reynolds decision digested above at pages 9-12. Only time and further decisions on non-arrestee-effects searches will resolve whether the test is "know" or merely "should know."**

**2) It may be useful to ask for consent even where another exception to the warrant requirement applies to justify warrantless search.**

**Officers faced with this situation may want to consider asking all present if they object to the officers' searching the items of disputed ownership. It never hurts to first request consent even if officers intend to search anyway based on another exception to the warrant requirement or on a warrant. See State v. Johnson, 104 Wn. App. 489 (Div. II, 2001) May 2001 LED:05 (consent to search obtained before showing search warrant to the suspect).**

**3) No "pretext stop" question here.**

**The Court of Appeals points out that defendant did not raise a "pretext stop" issue in this case. Even if he had raised such an objection, it should not have made a difference. That is because the stop was separately justified by the arrest warrant information the officer obtained before making the stop. See State v. Davis, 35 Wn. App. 724 (Div. I, 1983) Jan 84 LED:06.**

**VEHICLE SEARCH HELD "NOT INCIDENT TO ARREST" BECAUSE ARRESTEE HAD NO READY ACCESS TO OR IMMEDIATE CONTROL OF VEHICLE AT THE POINT OF ARREST; ALSO, INVENTORY THEORY REJECTED BECAUSE SEARCH WAS INVESTIGATORY**

State v. Johnston, ___ Wn. App. ___, 28 P.3d 775 (Div. II, 2001)

Facts: (Excerpted from Court of Appeals opinion)

> On October 4, 1998, Johnston and William Welling approached Aaron Johnson and Robert Repp. Johnston said he would shoot Johnson unless Johnson turned over his skateboard. Johnson gave up the skateboard, and Johnston and Welling drove away in a silver Volkswagen Fox.
>
> Two of Johnson's friends began looking for, and soon spotted, the silver Fox. They followed it into the parking lot of a Target store and watched as its

> occupants entered the store. They approached the now-unoccupied car, opened an unlocked door, and removed Johnson's skateboard.
>
> After retrieving the skateboard, the two friends called the police. [Officer A] and [Officer B] responded, parking their patrol cars near the silver Fox.
>
> Officer [A] spoke with the two friends, who had remained in the Target parking lot. She also spoke on the phone with Johnson. While she was still on the phone, the two friends saw Johnston and Welling come out of the store and directed [Officer A]'s attention to them. With [Officer A] now watching, Johnston and Welling "walk[ed] past the VW Fox, and look[ed] back at [her] several times." She observed that they matched the descriptions of the robbery suspects.
>
> At [Officer A]'s direction, Thornton arrested Johnston and Welling. The record does not show where Johnston and Welling were when arrested, or how much time had elapsed since either had been in the silver Fox; it shows only that each was arrested "in the immediate vicinity of the VW Fox[.]" During a search of Johnston's person, Thornton found "a set of keys that . . . Johnston said were for the VW Fox, a small amount of suspected methamphetamine, and a large quantity of cash[.]" During a search of the silver Fox, [Officer B] "found a backpack containing . . . 24.3 grams of methamphetamine, and a scale."

Proceedings: After Johnston lost a motion to suppress the evidence seized from his car incident to arrest, he was tried on several charges. Ultimately, he was convicted of or pleaded guilty to: A) unlawful possession of a controlled substance with intent to deliver (based on the meth found in the car); B) first degree theft; and C) simple possession of methamphetamine (based on the meth found on his person).

ISSUE AND RULING: 1) Was the search of the car a lawful search “incident to arrest”? (ANSWER: No, the record contains insufficient evidence of the arrestee’s ready access to or immediate control of the vehicle at the time of the arrest); 2) Was the vehicle search a lawful inventory as part of an impound procedure? (ANSWER: No, the record does not show any impound decision was made or that Johnston was offered an alternative to impound).

Result: Reversal of Pierce County Superior Court conviction of Jason Derik Johnston for unlawful possession of a controlled substance with intent to deliver; remanded for resentencing based on convictions of first degree theft and possession of methamphetamine.

ANALYSIS: (Excerpted from Court of Appeals opinion)

1) Vehicle search incident to arrest

> In Chimel v. California, 395 U.S. 752 (1969), the United States Supreme Court held that the scope of a search incident to arrest extends as far as, but no farther than, the area into which the arrestee might reach to grab a weapon or destroy evidence. In New York v. Belton, 453 U.S. 454 (1981), the United States Supreme Court held as a "bright-line rule" that when an arrestee is occupying the passenger compartment of a car at the time of arrest, he might grab a weapon or destroy evidence located anywhere within the compartment. Thus, the police may search the compartment incident to his arrest.
>
> In State v. Stroud, 106 Wn.2d 144 (1986), the Washington Supreme Court followed Belton except for locked containers. The court reasoned:
>
> > During the arrest process . . . officers should be allowed to search the passenger compartment of a vehicle for weapons or destructible evidence. However, if the officers encounter a locked container or locked

> glove compartment, they may not unlock and search either container without obtaining a warrant. . . . [T]he danger that the individual either could destroy or hide evidence located within the container or grab a weapon is minimized. The individual would have to spend time unlocking the container, during which time the officers have an opportunity to prevent the individual's access to the contents of the container.

As this language clearly shows, the key question when applying Belton and Stroud is whether the arrestee had ready access to the passenger compartment at the time of arrest. If he could suddenly reach or lunge into the compartment for a weapon or evidence, the police may search the compartment incident to his arrest. If he could not do that, the police may not search the compartment incident to his arrest. Sometimes, this is referred to as having "immediate control" of the compartment.

Three cases, including Belton and Stroud, exemplify when an arrestee has ready access to a passenger compartment. In Belton, the arrestees were inside the passenger compartment when they were arrested. In Stroud, one of the arrestees was standing "in the swing of the open passenger door," and the other arrestee was "a couple of feet away[.]" In State v. Bradley, 105 Wn. App. 30 (Div. I, 2001) **June 2001 LED:10** the arrestee was leaning into his car as officers drove up. He walked away, leaving the driver's door "somewhat ajar." He was arrested 10-12 feet away and would not go down to the ground when told to do that. At the moment of arrest in all three cases, the arrestee had ready access to, and thus was in "immediate control" of, the passenger compartment of his vehicle.

Three other cases exemplify when an arrestee lacks ready access. In State v. Wheless, 103 Wn. App. 749 (Div. I, 2001) **March 2001 LED:04** the arrestee parked his pickup truck 50-75 feet away from a tavern. He then went into the tavern, where he was arrested. Because he lacked access to the truck's passenger compartment at the time of arrest, officers could not search that compartment incident to his arrest.

In State v. Porter, 102 Wn. App. 327 (Div. II, 2000) **Nov 2001 LED:05** the arrestee was walking his dog about 300 feet from where his van was parked. He was arrested on an outstanding warrant and taken back to where his van was parked. Because he lacked access to the van's passenger compartment at the time of arrest, officers could not search that compartment incident to his arrest.

In State v. Perea, 85 Wn. App. 327 (Div. II, 1997) **June 97 LED:02** the arrestee exited and locked his car. He was then arrested a few feet away. Because he did not have access to the car's passenger compartment at the time of arrest, officers could not search that compartment incident to his arrest.

State v. Lopez, 70 Wn. App. 259 (Div. III, 1993) **Nov 93 LED:15** is notably out of step with these other cases, but as we said in State v. Porter, we do not think it was correctly decided. The arrestee was arrested in the informant's garage while his pickup was parked outside. He did not have access to the pickup at the time of arrest, so its passenger compartment should not have been searched incident to the arrest.

State v. Fore, 56 Wn. App. 329 (Div. I, 1989) **March 90 LED:05** is an enigma because the opinion fails to state enough facts. After parking his vehicle in the parking lot of a small market, one arrestee got out and went to a pay phone that was "sufficiently proximate" to the vehicle. The other arrestee got out and stood near the market's doorway. The opinion does not show the distances between phone, door and vehicle, or whether the vehicle's doors were open or closed. The arrestees were put under arrest, their vehicle was searched, and Division One upheld the search as incident to the arrest. The result is correct if one assumes that which might have been true but which the

opinion does not show-that at the time of the arrests an arrestee had ready access to the vehicle's passenger compartment.

In the present case, Johnston and Welling got out of their car, closed its doors, and went into the store. When they left the store after an unknown period of time, they walked past the car, apparently putting the two officers between them and it. They were arrested "in the immediate vicinity" of their car, but the record does not show how far away they were. It follows that the record does not show ready access to, or "immediate control" of, the car's passenger compartment; that the facts needed to invoke the search-incident exception have not been proved; and that the search-incident exception does not justify the search of the silver Fox.

2) Impound-inventory/community caretaking

The State argues on appeal that the police were conducting a lawful inventory search when they found the methamphetamine in the car. "In order to justify a warrantless inventory search, the State must demonstrate a lawful impound and that the inventory was not a mere pretext for an investigatory search." The record here does not show that the officers had decided to impound Johnston's car. Nor does the record show that the officers offered Johnston an opportunity to have a friend or relative take charge of the car. The record shows only that the officers were searching for the gun that they thought had been used to rob Johnson of his skateboard. The State has not proved facts sufficient to invoke the inventory-search exception.

[Some footnotes and citations omitted]

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## NEXT MONTH

The November 2001 **LED** will include entries regarding:

1) Furfaro v. City of Seattle, __ Wn.2d __, 27 P.3d 1160 (2001) (in a 5-3 decision of August 2, 2001, the Washington Supreme Court holds in a civil action that the First Amendment does not preclude warrantless arrests of nude dancers based on probable cause that they are engaging in obscene self-touching in violation of a city ordinance; case remanded for trial to determine if the arresting officers had reasonable grounds to believe that the dancers' behavior was obscene);

2) State v. Kennedy, __ Wn. App. __ (Div. II, 2001) [2001 WL 959523] (in a 2-1 August 24, 2001 decision, Division Two of the Court of Appeals holds that full Ferrier "knock and talk" warnings were required for officers to obtain valid consent to enter a motel room where the officers had gone to investigate after receiving a report of illegal drug-dealing by persons in the motel room);

3) State v. Hoggatt, __ Wn. App. __ (Div. II, 2001) [2001 WL 996072] (in an August 31, 2001 decision, Division Two of the Court of Appeals holds that the all-present-parties-consent-request rule of the Leach and Walker decisions does not apply to a request to merely enter the living room of a house through the front door (as opposed to a request to search the premises));

4) State v. Leavitt, __ Wn. App. __, 27 P.3d 622 (Div. II, 2001) (in a July 20, 2001 decision, the Court of Appeals for Division Two rules that a trial court's failure, in a 1998 sentencing proceeding, to warn a defendant of the Washington firearms bar, when coupled with other facts, precluded his prosecution and conviction under RCW 9.41.040 for unlawful firearms possession);

5) State v. Argueta, __ Wn. App. __, 27 P.3d 242 (Div. I, 2001) (in a July 23, 2001 decision, Division One of the Court of Appeals holds that "appropriately marked" in the felony-eluding

statute requires that the pursuing police vehicle bear some visible exterior insignia identifying the vehicle as an official police vehicle).

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## INTERNET ACCESS TO COURT RULES & DECISIONS, TO RCW'S, AND TO WAC 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 more simply accessed through a separate link clearly designated. Washington Rules of Court (including rules for appellate courts, superior courts, and courts of limited jurisdiction) are accessible on the Courts' website or by going directly to [http://www.courts.wa.gov/rules].

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 many significant opinions of the Court issued before 1990.

Easy access to relatively current Washington state agency administrative rules (including DOL rules in Title 308 WAC, WSP equipment rules at Title 204 WAC and State Toxicologist rules at WAC 448-15), as well as all RCW's current through January 2001, is at [http://slc.leg.wa.gov/]. Access to the "Washington State Register" for the most recent WAC amendments is at [http://slc.leg.wa.gov/wsr/register.htm]. Information about bills filed in the 2001 Washington Legislature is at the same address -- look under "Washington State Legislature," "bill info," "house bill information/senate bill information," and use bill numbers to access information. In addition, a wide range of state government information can be accessed at [http://access.wa.gov]. The address for the Criminal Justice Training Commission's webpage is [http://www.wa.cjt], while the address for the Attorney General's Office webpage is [http://www/wa/ago].

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The Law Enforcement Digest is co-edited by Senior Counsel John Wasberg and Assistant Attorney General Shannon Inglis, both of the Washington Attorney General's Office. Questions and comments regarding the content of the **LED** should be directed to Mr. Wasberg at (206) 464-6039; Fax (206) 587-4290; E Mail [johnw1@atg.wa.gov]. Questions regarding the distribution list or delivery of the **LED** should be directed to Darlene Tangedahl of the Criminal Justice Training Commission (CJTC) at (206) 835-7337; Fax (206) 439-3752; e mail [dtangedahl@cjtc.state.wa.us]. **LED** editorial comment and analysis of statutes and court decisions expresses the thinking of the writers and does not necessarily reflect the views of the Office of the Attorney General or the CJTC. The **LED** is published as a research source only. The **LED** does not purport to furnish legal advice. **LED**'s from January 1992 forward are available via a link on the Commission's Internet Home Page at: [http://www.wa.gov/cjt].