

WASHINGTON STATE COURT OF APPEALS DIVISION THREE

CASE SUMMARIES FOR ORAL ARGUMENT

The following summaries are drawn from briefs and lower court judgments. The summaries have not been reviewed for accuracy by the judges and are intended to provide a general idea of facts and issues presented in the cases. The summaries should not be considered official court documents. Facts and issues presented in these summaries should be checked for accuracy against records and briefs, available from the Court, which provide more specific information.

Date of Hearing: Wednesday, June 12, 2019
Location: Spokane, 500 North Cedar

9:00 a.m.

1) **No.: 35641-8-III**

Case Name: In re the Marriage of Judith K. Tulleners and Andre J. Tulleners

County: Spokane

Case Summary: Following a bench trial in the dissolution of the 18-year marriage of Judith Tulleners and Andre Tulleners, the court awarded Judith \$301,741 in community property, and Andre \$718,172 in community property. The court also awarded Judith \$251,730 in separate property. In dividing the property, the court did not place a value on Judith's teacher retirement pension, but instead divided it on an as-received basis. Additionally, the court gave Andre credit for the \$187,500 he held in his retirement account before marrying Judith. Judith appeals the court's property division.

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2) **No.: 35567-5-III**

Case Name: State of Washington v. Jeremy J. Alvarez

County: Franklin

Case Summary: Jeremy Alvarez was charged with two counts of second degree child rape after 13-year-old J.P. (the daughter of his father's fiancée) reported to a school counselor and police that Alvarez had touched her breasts and vagina over her clothes on one evening while they watched a movie (count I), and that he then followed her to her bedroom and rubbed lotion on her legs and digitally and orally penetrated her (count II). At trial, the officer who contacted Alvarez testified that when confronted with the allegations of rape, he had no look of shock or surprise on his face. The State's forensic child interviewer testified that J.P.'s statements given in an interview "were consistent" with her initial statements to police. The jury acquitted Alvarez of the count I, but found him guilty of count II for his conduct in J.P.'s bedroom. The court imposed a 110-month minimum term sentence with lifetime community custody. Alvarez appeals the conviction and several of conditions of community custody that the court imposed.

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3) **No.: 36225-6-III (Anchor Case)**

Consolidated: 36335-0-III

Case Name: Medelez, Inc. v. State of Washington Dept. of Employment Security, et al

County: Franklin

Case Summary: Jeffrey Metzener holds a commercial driving license. Prior to his employment with Medelez, Inc., he was subject to a substance abuse plan due to a previous positive drug test. The substance abuse plan required a return-to-duty test and six follow-up tests. Medelez called Metzener in to complete the test on a day that Metzener was not scheduled to work. Due to medical problems, Metzener did not anticipate returning to work for three weeks. The return-to-duty test included a drug screen and a breath test for alcohol. Metzener had consumed two alcoholic drinks during lunch and failed the breath test, but passed the drug screen. Medelez then terminated Metzener's employment because it anticipated Metzener's commercial driving license would be suspended due to the positive breath test. Metzener applied for unemployment benefits. The Employment Security Department (ESD) denied his application due to violation of Medelez's drug testing policy. Metzener appealed and an administrative law judge upheld the denial of benefits. Metzener then appealed to ESD's commissioner, who reversed the administrative law judge's ruling and allowed unemployment benefits.

Medelez appealed to the superior court, which reversed the commissioner's ruling and disallowed benefits. Metzener and ESD both appeal to this court.

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4) No.: 35848-8-III

Case Name: State of Washington v. Lanny Lee Griffith

County: Chelan

Case Summary: Lanny Griffith entered the fifth floor of the Chelan County Courthouse to make a payment on his legal financial obligations, but first needed to go through security screening. A private contractor, Pacific Security, administers the screening. Pacific's security officer, James Mattix, directed Griffith to empty his pockets and take off his large jacket. The jacket set off the screening magnetometer. Mattix searched the jacket pocket and found a small clear bag of what later proved to be methamphetamine. The State charged Griffith with possession of a controlled substance. He moved to suppress the evidence on grounds that courthouse security's dual administrative search of his coat for both weapons and drugs was unlawful under the Fourth Amendment and article 1, section 7 of the Washington State Constitution. Mattix testified at the CrR 3.6 hearing that he was only trained to search for weapons but also chooses to search for drugs out of curiosity and because he is concerned about weaponized drugs like fentanyl. The court denied the motion to suppress, holding Mr. Griffith impliedly consented to the search, and that courthouse searches for drugs are permissible under article 1, section 7 due to the danger of modern drugs. The court found Griffith guilty as charged after a stipulated facts bench trial. He appeals.

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11:00 a.m.

5) No.: 36234-5-III

Case Name: Barry Moore, et ux v. Carol Hanson, et al

County: Whitman

Case Summary: Carol Hanson lives on residential property in Pullman, and Barry and Danna Moore are her neighbors to the north. The northern portion of Hansen's property contained a dilapidated rock wall with juniper shrubs planted in the soil behind the wall. Hansen's parents previously owned the property and had constructed the wall

and planted the bushes in the mid-1960s. Just to the north of the juniper bushes is a chain link fence that was installed by Moores' predecessor. Hanson sought to replace the rock wall with an engineered retaining wall and to remove overgrown juniper bushes. She removed one bush by sawing through the trunk and pulling the pieces down onto her lawn. Hanson collaborated with Moores on building the wall, but they could not agree on a design or on Hanson's plan to remove the bushes. Hanson eventually received City approval for a retaining wall design. Moores then filed suit against Hanson in superior court alleging claims of adverse possession, loss of lateral support, timber trespass, and nuisance. Moores also sought an injunction to permit their entry to Hanson's property to replace the wall and landscaping. Hanson filed a motion for partial summary judgment to dismiss all claims except the adverse possession claim. The court granted Hanson's motion. Per the trial court's further authorization, Hanson has built her engineered retaining wall and removed the juniper bushes situated on her side of the chain link fence. Moores appeal.

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11:30 a.m.

6) No.: 36095-4-III

Case Name: Personal Restraint Petition of Don Arthur Moore

County: Okanogan

Case Summary: In 2014, Don Arthur Moore was convicted of first degree murder in the death of Bruce Molony. Moore's conviction was affirmed on direct appeal in 2017. He then timely filed a personal restraint petition. Moore is a Vietnam combat veteran who suffers from chronic post-traumatic stress disorder (PTSD). Prior to trial, Moore's public defenders explored a diminished capacity defense, but those attorneys withdrew and a new public defender, Michael Prince, took over the case. Moore informed Prince of the prior attorneys' interest in a diminished capacity defense, his PTSD, and other mental health issues. Prince declined to pursue a diminished capacity defense and instead presented a self-defense theory based on Moore's recollection of the murder incident. The jury rejected Moore's self-defense claim. In his personal restraint petition, Moore claims Prince gave him ineffective assistance of counsel that prejudiced his right to a fair trial and impacted the length of his sentence.

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