

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: Thursday, January 30, 2020
Location: Spokane, 500 North Cedar

9:00 a.m.

- 1) No.: 36736-3-III**
Case Name: Responsible Growth NE WA, et al. v. Pend Oreille Public Utilities Dist. No. 1, et al.
County: Spokane
Case Summary: Pend Oreille P.U.D. purchased and then resold a parcel of land to a private entity for development of a smelter. Responsible Growth and others who opposed the smelter project filed a declaratory judgment action, seeking to declare both the purchase and resale to have been *ultra vires* or otherwise illegal. The superior court granted summary judgment in favor of the P.U.D., and the plaintiffs appeal.

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- 2) No.: 36499-2-III**
Case Name: RevolutionAR, Inc., et al. v. Gravity Jack, Inc., et al.
County: Spokane
Case Summary: RevolutionAR, Inc. entered into a contract with Gravity Jack, Inc., in connection with a technology startup and consulting venture. RevolutionAR

ended up suing Gravity Jack and its CEO in contract and in tort for interfering with potential clients and investors, and for wrongfully appropriating materials developed during the business venture. RevolutionAR's former CEO also sued alleging infringement of personality rights and invasion of privacy. During discovery, the trial court denied the plaintiffs' motion to compel production of the defendants' business and financial records, and granted the defendants' motion for a protective order of the same. The trial court eventually granted summary judgment dismissing the lawsuit on the grounds that the assignment of rights in the parties' contracts governed the matter. It also awarded fees and costs against the plaintiffs for bringing a frivolous lawsuit. The plaintiffs appeal.

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3) No.: 36436-4-III

Case Name: State v. Jose Mario Lopez

County: Chelan

Case Summary: The State charged Jose Mario Lopez with multiple child sex offenses. Mr. Lopez's initial attorney investigated the case, but was removed after a breakdown in communication. Mr. Lopez's second attorney continued the defense investigation, and sought to re-interview the victim. The trial court denied the motion for a second interview. The case proceeded to trial, where the trial court permitted the State to present expert testimony on the subject of delayed reporting. The jury convicted Mr. Lopez as charged. Mr. Lopez appeals.

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10:30 a.m.

4) No.: 36525-5-III

Case Name: Loyal Pig, LLC, et al. v. Dep't of Ecol., et al.

County: Benton

Case Summary: Loyal Pig, LLC, sought a permit to change its use of its existing water right. Such applications require an annual consumptive quantity (ACQ) calculation, which are based on the applicant's average water use over a five year period. In 2017, the Franklin County Conservancy Board approved the application, and calculated the ACQ using the 5-year average preceding 2014 because the neighboring

Benton County Conservancy Board had used that ACQ in a prior application by Loyal Fig. The Department of Ecology reversed based upon failure to utilize the most recent 5-year average from 2017. The Pollution Control Hearings Board (PCHB) affirmed the Department, but the superior court reversed both the Department and the PCHB. The Department appeals this and other matters relating to the ACQ calculation.

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11:00 a.m.

5) No.: 36134-9-III

Case Name: Harlan D. Douglass, et ux. v. Bryan J. Reilly

County: Spokane

Case Summary: Harlan Douglass sued his former personal assistant, Bryan Reilly, for theft. A jury found in favor of Mr. Douglass. Mr. Reilly appeals the sufficiency of the evidence, the trial court's denial of his motion to bifurcate some of the claims, and other matters relating to the trial.

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6) No.: 36223-0-III

Case Name: State v. Stafone Nicholas Fuentes

County: Spokane

Case Summary: A federal narcotics investigation led to several defendants identifying Stafone Fuentes as the culprit in an unrelated shooting. Prior to trial, Mr. Fuentes's attorney sought the cooperating witnesses' plea agreements, which were under seal in federal court. The State obtained and provided copies to the defense, but the trial court refused to admit them as evidence due to the federal seal. The trial court also prevented Mr. Fuentes from presenting other suspect evidence, permitted a witness to characterize Mr. Fuentes as her pimp, and permitted the State to cross-examine Mr. Fuentes concerning his testimony from a prior mistrial. Mr. Fuentes appeals these rulings and other matters.

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12:00 p.m.

7) **No.: 36514-0-III**

Case Name: State v. Rocky Rhodes Kimble

County: Stevens

Case Summary: Rocky Kimble filed a CrR 7.8 motion seeking to vacate his sentence and withdraw his guilty plea to rape and burglary. During his CrR 7.8 motion hearing, the superior court denied Mr. Kimble's motion to disqualify his counsel, and also refused to estop the State from contesting an offender score issue that it had conceded in prior proceedings. Mr. Kimble appeals.

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