

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, March 20, 2013
Location: Spokane, 500 N. Cedar

9:00 a.m.

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- 1) **No.: 30558-9-III**
Case Name: William and Kathleen Schorer, et al v. Benton County, et al
County: Benton
Case Summary: Walter and Kathleen Bear applied to Benton County for a special use permit to use their property as a home base for their trucking and excavating business. The County issued the permit to the Bears, over opposition by several neighbors (collectively “Schorer”). Schorer filed a RCW 36.70C, Land Use Petition Act petition and requested injunctive and declaratory relief. Schorer contended the permit was precluded by homeowner restrictions and protective covenants. The court agreed and granted declaratory relief to Schorer. The Bears appeal.

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- 2) **No.: 30610-1-III**
Case Name: Debra Jean Blum v. Our Lady of Lourdes Hospital at Pasco, d/b/a Lourdes Health Network
County: Franklin

Case Summary: Debra Jean Blum filed a negligence lawsuit against Our Lady of Lourdes Hospital at Pasco after she sustained injuries from a fall while attempting to sit down in a wheelchair. The hospital moved for summary judgment. At the hearing on the motion, the court found Blum's expert affidavit insufficient and her additional medical documents inadmissible. The court thus granted the hospital's summary judgment motion and dismissed Blum's lawsuit. She appeals.

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- 3) **No.: 30749-2-III**
Case Name: GMAC Mortgage, Inc. v. City of Spokane, et al
County: Spokane

Case Summary: In 1998, the City of Spokane made a redevelopment loan for home improvements to Jeannette Swan. The City recorded its deed of trust. In 2008, GMAC Mortgage made a mortgage loan secured by a recorded deed of trust to the then-owner of the property, Frank Line, Ms. Swan's son. In 2011, the City initiated nonjudicial deed of trust foreclosure proceedings. GMAC filed an action for declaratory judgment, quiet title and injunctive relief, contending the statute of limitation had expired on the City's right to enforce its loan as a lien. The City moved for summary judgment, contending that its lien has priority over GMAC's deed of trust. The superior court denied the City's motion. The City sought discretionary review, which this court granted.

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4) **No.: 30212-1-III**

Case Name: State of Washington v. Jack Maurice Hewson, Jr.

County: Spokane

Case Summary: Masked gunmen Robert Delao and Andrew Oakes kicked open an exterior door at Jamie Robinson's house, but she foiled their attempted entry. A third man pointed a gun at Robinson and attempted entry, but fled as she placed a telephone call. A fourth man, Joseph Hoofman, was the getaway driver. Delao, Oakes, and Hoofman each implicated Jack Hewson as the participant who pointed the gun at Robinson. She positively identified Hewson in a police photomontage. Hewson and Delao were charged as a principal or accomplice with first degree burglary and conspiracy to commit first degree robbery. Hewson was also charged with six firearm enhancements, but Delao with none because he cooperated with authorities. At trial, the court precluded Hewson from cross-examining Delao (1) regarding his gang membership as a motive to falsely accuse Hewson, and (2) the amount of leniency he received for cooperating with the State. The jury found Hewson guilty as charged and answered "yes" to four special verdict inquiries whether Hewson or an accomplice was armed with a firearm when committing the crimes. The court denied Hewson's motion for new trial based on a claim the State violated *Brady v. Maryland*, 373 U.S. 83 (1963), by failing to disclose an alleged promise of favorable treatment to another witness in exchange for his testimony. Hewson appeals.

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11:00 a.m.

5) **No.: 30524-4-III**

Case Name: IGI Resources Inc. v. City of Pasco

County: Franklin

Case Summary: IGI Resources, Inc. (IGI), a natural gas provider, filed a complaint in equity for a refund of utility taxes overpaid to the City of Pasco on IGI's natural gas deliveries to customers in the Pasco Gate area that occurred prior to the City annexing Pasco Gate, and in the Burbank Heights Gate area that is outside the Pasco city limits. IGI did not first attempt to pursue municipal administrative remedies for the refund. On cross-motions for summary judgment, the trial court granted IGI's motion upon determination the City's administrative guidelines and remedies did not apply. The court awarded IGI "\$128,384.33, plus pre- and post-judgment interest. The City appeals.

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6) **No.: 30385-3-III**

Case Name: State of Washington v. Nicole Marie Lopez

County: Yakima

Case Summary: Nicole Lopez purchased a rebuilt green Dodge Durango from a car dealer in 2007. The vehicle identification numbers (VIN) on the dash and the driver's side door matched—both ending in "7932." Title was lawfully transferred to Lopez, who registered the car, but then re-registered it in October 2008 with a new exterior color, red and black. Raymond Munoz owned an all black Dodge Durango that was stolen in 2008. In an unrelated investigation, sheriff's deputies seized a stripped-down green Durango with no VIN sticker on the dash, but with a VIN ending in "7932" inside the door. Subsequent investigation revealed that the VIN on the dash of Lopez's red and black Durango matched the VIN on the door of the seized green Durango, and the VIN on the door of the red and black Durango came back as registered to Raymond Munoz. Police seized the vehicle and Lopez was charged with possession of a stolen motor vehicle. Before processing the vehicle for evidence or giving Lopez and opportunity to inspect it, the police inadvertently released the vehicle from impound to an individual to whom Lopez had transferred title. The vehicle was later recovered and both the State and Lopez conducted diagnostic tests to determine its true identity. Lopez considered the results favorable and offered them into evidence. The court ruled the test results inadmissible. Lopez was convicted as charged. She appeals.

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