WASHINGTON STATE COURT OF APPEALS
DIVISION THREE

CASE SUMMARIES FOR ORAL ARGUMENT

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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.

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Date of Hearing: Wednesday, December 5, 2018
Location: Spokane, WA – 500 North Cedar
Panel: Robert Lawrence-Berrey, Kevin Korsmo, Laurel Siddoway

9:00 a.m.

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1) No.: 358623
Case Name: Enriqueta Sanchez v. McDougall & Sons, Inc.
County: Chelan

Case Summary: In July 2012, Enriqueta Sanchez was injured while working as a seasonal fruit packer at McDougall & Sons ("McDougall"). Ms. Sanchez filed for and received workers' compensation benefits for her injuries. After Ms. Sanchez returned to work, McDougall placed Ms. Sanchez in a light duty position in accordance with her medical restrictions. While working in this position, Ms. Sanchez was accidentally struck in the head again. She subsequently told McDougall that she could not perform the duties associated with her original light duty position, and McDougall assigned Ms. Sanchez to the washroom attendant position. Several months later, following an independent medical evaluation that found no basis for any work limitations as a result of Ms. Sanchez's prior injury, the Department cleared Ms. Sanchez to return to her original position. However, Ms. Sanchez stated she was still injured and could not return to her fruit packing position. As a result, McDougall laid Ms. Sanchez off and Ms. Sanchez subsequently filed a complaint alleging disability discrimination and wrongful discharge in violation of public policy and the Industrial Insurance Act (IIA). McDougall was granted summary judgment on the grounds that Ms. Sanchez's claims were precluded by

the IIA's exclusive remedy provision, and Ms. Sanchez was unable to show that McDougall discriminated against her.

Ms. Sanchez now appeals, arguing (1) her claims were not precluded by the IIA's exclusive remedy provision, (2) the trial court erred when it dismissed her motion to strike and motion for reconsideration, and (3) the trial court erred when it granted summary judgment on all of Ms. Sanchez's claims.

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2) No.: 355314
Case Name: Mary E. Nielson v. Household Finance Corporation III, et al
County: Grant

Case Summary: Household Finance Corporation III (HFC) lent money to Mary Nielson and her then husband. Based on HFC's representations, Ms. Nielson believed that in exchange for the loan, HFC took a security interest in her mobile home only. However, HFC obtained a security interest in both the mobile home and the underlying real property, and recorded its Deed of Trust. More than ten years later, Ms. Nielson brought claims against HFC for violations of Washington's Consumer Protection Act and the Consumer Loan Act, as well as claims for fraud and negligent misrepresentation. The trial court held that the statutes of limitations barred Ms. Nielson's claims because the recording of the Deed of Trust put her on constructive notice of the allegedly wrongful security interest. Ms. Nielson appeals, contending the court erred by finding she had constructive notice and erred by finding her claims based on HFC's assignment of the Deed in 2015 were barred by the statute of limitations.

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3) No.: 355446
Case Name: San Juan Sun Grown v. Chelan County
County: Chelan

Case Summary: In November 2012, Washington State voters passed Initiative 502, legalizing the possession and private consumption of non-medical cannabis and establishing a licensing system for the production, processing, and retailing of cannabis for recreational use. Beginning in 2012, Chelan County enacted a series of moratoria on

the siting of all recreational marijuana production, processing, and retail sales land uses within its jurisdiction. In February 2016, the County passed Resolution 2016-14, permanently prohibiting recreational marijuana production and processing within its jurisdiction.

San Juan Grown, LLC (San Juan) first began production and processing of marijuana on San Juan Island in August of 2014. In February 2015, it submitted an application for change of location to the Washington State Liquor and Cannabis Board (LCB) to relocate its operation to Chelan County. San Juan's owner entered into a contract to buy property in Chelan County prior to the enactment of Resolution 2016-14. Beginning in October 2015, representatives of San Juan had multiple interactions with County officials regarding the effect of the various County resolutions regarding recreational marijuana. San Juan obtained a building permit from the County in November 2015, and San Juan proceeded to begin building its new facility.

In August 2016, the County issued San Juan a notice and order for county building and zoning code violations. The notice informed San Juan of five code violations: (1) production and/or processing of marijuana that was not "lawfully established" prior to Chelan County's moratorium; (2) use of unpermitted buildings; (3) construction of a fence that extends, in certain places, roughly five feet into the required county setback; (4) maintenance of a nuisance in violation of Resolution 2016-14; and (5) the presence of excess vehicles on the property. San Juan appealed the notice and order to a hearing examiner, who upheld all aspects of the notice and order.

San Juan filed a Land Use Petition challenging the hearing examiner's findings. The superior court affirmed the hearing examiner on all counts but the presence of excess vehicles. San Juan now appeals to this court, arguing that: (i) the hearing examiner's findings of fact and conclusions of law were insufficient for appellate review and contained no citations to relevant case law; (ii) the hearing examiner allocated the burden of proof incorrectly to San Juan; (iii) the hearing examiner erred in finding that San Juan's rights did not vest prior to the moratorium on marijuana production, processing, and retail; (iv) the hearing examiner erred in finding that building permits were required for San Juan's "temporary growing structures"; and (v) the hearing examiner erred in not finding that San Juan had a right to a variance for the fence setback violation.

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4) No.: 352731
Case Name: State of Washington v. Thomas J. Nelson
County: Douglas

Case Summary: Douglas County Trooper Mark Ward stopped Thomas Nelson for speeding and noticed an odor of alcohol coming from Mr. Nelson's vehicle. Mr. Nelson indicated he had consumed two 16-ounce beers earlier in the day, and Trooper Ward conducted field sobriety tests. While submitting to the field sobriety tests, Mr. Nelson exhibited signs of intoxication. Trooper Ward placed Mr. Nelson under arrest for driving under the influence (DUI) and transported him to the jail, where Mr. Nelson agreed to submit to a breath test after Trooper Ward read Mr. Nelson the standard implied consent warnings. The two breath samples indicated levels of .078 and .079. A jury convicted Mr. Nelson of DUI and negligent driving in the first degree.

The superior court upheld Mr. Nelson's convictions, and this Court granted discretionary review. Mr. Nelson contends the district court erroneously denied his motion to suppress the breath test results, arguing that law enforcement cannot perform a breath alcohol test pursuant to the search incident to arrest exception to the warrant requirement of article I, section 7 of the Washington Constitution.

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11:00 AM

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5) No.: 353494
(Linked with No. 353508)
Case Name: State of Washington v. Daniel Herbert Dunbar
County: Spokane

Case Summary: In December 2016, Victoria Enright reported her vehicle stolen, and the following day she reported that she found the vehicle with Daniel Dunbar inside it. The State originally charged Mr. Dunbar with possession of a stolen motor vehicle and possession of a motor vehicle theft tool, and later amended the information to include a charge for witness tampering based on Mr. Dunbar's repeated calls to Ms. Enright from jail.

During the jury trial, the State called Ms. Enright, as a witness. Ms. Enright, who was present under a material witness warrant, answered all of the State's questions.

Outside the presence of the jury, Mr. Daniel's counsel informed the court that she wanted to impeach Ms. Enright using a recent diversion agreement wherein Ms. Enright appeared to make a false statement under penalty of perjury. Ms. Enright's counsel was brought in, and informed the court that he was instructing Ms. Enright to now answer any more questions and that she was required to assert a "blanket" Fifth Amendment privilege. In passing, defense counsel agreed the privilege needed to be asserted as a whole. When it became clear that Ms. Enright intended to plead the Fifth as to all of defense counsel's questions, Mr. Dunbar moved to strike Ms. Enright's testimony. The court denied the motion and proceeded with cross-examination. Ms. Enright invoked the Fifth Amendment as to all of defense counsel's questions, approximately 40 in total. Defense counsel's questions did not raise the diversion agreement.

Mr. Dunbar subsequently called Leanne Shelly, a roommate of Mr. Dunbar and Ms. Enright at the time the car was reported stolen. The trial court excluded portions of her testimony regarding the fact that Ms. Shelly asked Mr. Dunbar to help find the vehicle and that Ms. Shelly saw Ms. Enright changing her own license plates weeks after she got the car back. The State played recordings of two phone calls and a voicemail at trial to support the witness tampering charge. The jury found Mr. Dunbar guilty of possession of a stolen motor vehicle and witness tampering, but not guilty of possession of a motor vehicle theft tool.

Mr. Dunbar appeals, arguing (1) Mr. Dunbar's right to confrontation was violated when the trial court allowed Ms. Enright to assert her Fifth Amendment privilege against self-incrimination, depriving Mr. Dunbar of his right to cross-examination, (2) Mr. Dunbar was deprived of his right to present a defense when the trial court limited questioning of Ms. Shelly, (3) the trial court erred when it failed to give a unanimity instruction on the witness tampering charge, and (4) the trial court erred when it imposed consecutive sentences, which was not authorized by the SRA.

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6) No.: 354024
Case Name: State of Washington v. Gabriel M. Gomez
County: Benton

Case Summary: Gabriel Gomez and N.A. were both members of the Word of Faith Church in Kennewick. They first became acquainted when N.A. joined the children's ministry at 8 years old and Mr. Gomez was an assistant teacher. As she became older, N.A. joined the youth ministry team and assisted with the media team

supervised by Mr. Gomez. During this time, Mr. Gomez and N.A. often worked together in a tight, confined space, and the nature of their relationship began to change. Mr. Gomez would initiate physical contact with N.A. when showing her how to do things. N.A. also testified that Mr. Gomez would text her and that they communicated via FaceTime video on several occasions. One day while N.A. was working at the computer, Mr. Gomez reached his arms under her arms, placed his hands on her breasts and squeezed them for 20 to 30 seconds. The State charged Mr. Gomez with child molestation in the third degree. A jury found him guilty as charged.

Mr. Gomez appeals, arguing: (1) the trial court erred when it admitted three different instances of ER 404(b) evidence: (i) testimony that Mr. Gomez was instructed to modify his behavior around the youth of the church, (ii) testimony about the FaceTime interactions, and (iii) testimony that Mr. Gomez asked out an adult immediately before N.A. reported the abuse; (2) he received ineffective assistance of counsel, (3) the prosecutor committed prosecutorial misconduct during closing argument, (4) the cumulative error doctrine warrants a new trial, (5) his community custody conditions are vague and should be struck, (6) costs should not be imposed if the State is the prevailing party, and (7) his filing fee and other discretionary costs should be reversed and struck.

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