

Supreme Court Issues
September Term 2016
November 7, 2016

- Assault, Criminal—Domestic Violence—Protection Order—Proceedings—Due Process—Oral Testimony—Cross-Examination—Necessity.
- Assault, Criminal—Second Degree Assault—Elements—Apprehension and Fear of Bodily Harm—Sufficiency of Evidence.
- Automobiles—Driving While Intoxicated—Blood or Breath Test—Advisement of Rights—Sufficiency—Variation From Statute—Failure to Warn of Legal Limit for Tetrahydrocannabinol (THC)—Testing Device Incapable of Measuring THC Level—Effect.
- Automobiles—Driving While Intoxicated—Blood or Breath Test—Advisement of Rights—Sufficiency—Variation From Statute—Failure to Warn of Legal Limit for Tetrahydrocannabinol (THC)—Use of Testing Device Incapable of Measuring THC Level—Effect.
- Aviation—Aircraft Failure, Malfunction, or Defect—Engine—Fuel System Components—Minimum Standards—Federal Aviation Act—Preemption of State Law Standard of Care—Implicit Preemption—Occupying Field.
- Building Regulations—Land Use Regulations—Vested Rights—“Land Use Control Ordinances”—What Constitutes—Stormwater Drainage and Runoff Regulations—Federal Statutes—Preemption of State Law—Federal Clean Water Act.
- Civil Rights—Law Against Discrimination—Sexual Orientation Discrimination—Public Accommodations—Refusal of Business to Provide Services for Same Sex Marriage—Religious Objection—Constitutional Law—Freedom of Religion—Free Exercise—Freedom of Speech—Expressive Conduct—Freedom of Association—Expressive Association.
- Counties—Board of Commissioners—Powers—Employment of Outside Counsel—Validity—Objection of Elected County Prosecuting Attorney.
- Criminal Law—Competency to Stand Trial—Pretrial Finding of Competence—Post-trial Finding of Incompetence—Standard of Competency—Necessity of Accommodations.
- Criminal Law—Confessions—Admission as Evidence—Voluntariness of Confession—Denial of Access to Counsel—Delay in Preliminary Appearance.
- Criminal Law—Conspiracy—Subject Crime—Murder by Extreme Indifference to Human Life—Validity.
- Criminal Law—Crimes—Alternative Means of Committing Offense—Unanimity—Necessity.
- Criminal Law—Crimes—Alternative Means of Committing Offense—Unanimity—Necessity—Absence of Evidence of One Means.
- Criminal Law—Evidence—Accomplice Testimony—Cautionary Instruction—Necessity.
- Criminal Law—Evidence—Other Offenses or Acts—Uncharged Criminal Act—Occurrence of Act—Proof—Sufficiency of Evidence.

- Criminal Law—Evidence—Preservation—Failure of State—Potentially Useful Evidence—Bad Faith—Surveillance Video.
- Criminal Law—Former Jeopardy—Multiple Convictions—Same Offense—Second Degree Rape of Child and Second Degree Rape of a Physically Helpless or Mentally Incapacitated Person—Remedy—Lesser Offense—What Constitutes—General and Specific Rule of Statutory Construction—Applicability.
- Criminal Law—Former Jeopardy—Multiple Convictions—Same Offense—What Constitutes—Unit of Prosecution—Second Degree Promoting Prostitution.
- Criminal Law—Homicide—Punishment—Juvenile Defendant—Multiple Convictions—Presumptive Consecutive Standard Range Sentences—Effective Life Sentence—Validity—Eighth Amendment.
- Criminal Law—Juveniles—Jurisdiction of Adult Court—Automatic Transfer—Mandatory Sentence Enhancements—Cruel and Unusual Punishment.
- Criminal Law—Parties to Offenses—Accomplices—What Constitutes—Murder by Extreme Indifference to Human Life—Actual Knowledge of Principal’s Commission of Murder by Extreme Indifference—Necessity.
- Criminal Law—Plea of Guilty—Plea Bargaining—Duty of State—Recommendation of Sentence—Scope of Duty—Sentencing Hearing—Answering Court’s Direct Questions.
- Criminal Law—Punishment—Death Penalty—Jury—Selection—Challenge for Cause—Conviction Proneness.
- Criminal Law—Punishment—Death Penalty—Jury—Selection—Challenge for Cause—Opposition to Death Penalty—Disqualification—Necessity.
- Criminal Law—Punishment—Death Penalty—Review—Evidence—Sufficiency—Passion or Prejudice—Proportionality.
- Criminal Law—Punishment—Death Penalty—Special Sentencing Procedure—Evidence—Circumstances of Crime—Defendant Serving Life Sentence.
- Criminal Law—Punishment—Death Penalty—Special Sentencing Procedure—Mitigating Circumstances—Statutory Query—Instruction—Necessity of Unanimity to Answer “No”—Validity.
- Criminal Law—Punishment—Death Penalty—Special Sentencing Procedure—Mitigating Evidence—Defendant’s Attempt to Seek Treatment—Admission Conditioned on Admission of State’s Rebuttal Evidence.
- Criminal Law—Punishment—Death Penalty—Special Sentence Procedure—Notice—Decision to File—Review—Standard of Review—Statutory Provisions—Constitutionality.
- Criminal Law—Punishment—Death Penalty—Special Sentence Procedure—Notice—Timing—Decision to File—Basis—Matters Considered—Investigation—Sufficiency.
- Criminal Law—Punishment—Death Penalty—Trial—Jury—Deliberations—Instructions—Validity—Standard of Proof—Premeditation.
- Criminal Law—Punishment—Sentence—Financial Assessments—Ability to Pay—Discretionary Assessments—Review—Issue First Raised on Appeal.

- Criminal Law—Punishment—Sentence—Outside Standard Range—Review—Incorrect Standard Range—Remedy.
- Criminal Law—Right to Confront Witnesses—Cross-Examination—Mental Health Condition—Substance Abuse—Denial—Validity.
- Criminal Law—Right to Confront Witnesses—Scope—Cross-Examination—Restriction—Complaining Witness—Prior False Accusation—Nature of Accusation—Harmless Error.
- Criminal Law—Trial—Time of Trial—Constitutional Right—Appeal—Review—Issues not Raised in Trial Court—Constitutional Rights—“Manifest” Error.
- Criminal Law—Weapon—Enhanced Punishment—Firearm—Armed With Firearm—Proof—Nexus—Conspiracy.
- Divorce—Child Custody—Factors—Sexual Orientation of Parent—Religion of Parent—Best Interests of Child—Stability.
- Divorce—Child Support—Enforcement—Foreign State’s Order—Timeliness of Enforcement Action—Applicable State Law.
- Divorce—Child Support—Medical Expenses—“Uninsured Medical Expenses”—What Constitutes.
- Divorce—Maintenance—Need of Recipient—Ability to Pay.
- Divorce—Parenting Plan—Sole Decision-Making Rights—Educational Instruction—Freedom of Religion.
- Employment—Compensation—Damages for Nonpayment of Wages—Personal Liability—Termination of Employment of Officer, Vice Principal or Agent Before Wages Became Due—Bankruptcy Proceedings—Effect.
- Employment—Vicarious Liability—Loaned Employee—Borrowed Servant Doctrine—General Employer Liability—Intermediary Lender.
- Environment—Shoreline Management—Development—Oil Transportation Facility—Ocean Resources Management Act—Applicability.
- Financial Institutions—Bills and Notes—Negotiation of Bank Check—Bank’s Duty of Ordinary Care—Breach—Absence of Payee Indorsement.
- Financial Institutions—Bills and Notes—Negotiation of Bank Check—Indorsement by Nonpayee—Liability of Bank—Preclusion of Action for Failure of Account Holder to Timely Discover and Report Unauthorized Signature, Alteration, or Unauthorized Indorsement—Applicability to Indorsement by Nonpayee.
- Financial Institutions—Bills and Notes—Negotiation of Bank Check—Indorsement by Nonpayee—Notice to Account Holder—Sufficiency—Images of Checks in On-Line Account Statement.
- Indians—Taxation—Motor Vehicle Fuel Tax—Importation of Fuel from Oregon—Sales to Retailers Within Reservation—Treaty Preemption of State Taxation—Yakama Treaty—Right to Travel Upon Public Highways.
- Industrial Insurance—Disability—Occupational Disease—Firefighters—Burden Shifting Provision—Rebuttable Evidentiary Presumption—Burdens of Production and Persuasion—Discharge of Burden.

- Industrial Insurance—Third Person Action—Coworkers—Immunity—Course of Employment—Working for Employer at Time of Injury—Necessity.
- Insurance—Duty to Defend—Scope—Exclusions—Pollution Exclusion—Release of Carbon Monoxide Poisoning Due to Negligently Installed Water Heater.
- Insurance—Statutory Provisions—Insurance Fair Conduct Act—Construction—Private Cause of Action—Scope—Violation of Insurance Regulations.
- Intoxicating Liquors—Negligence—Intoxication Defense—Proof of Intoxication—Admission—Sufficiency.
- Juveniles—Custody—Nonparent Petition—Hearing—Adequate Cause—What Constitutes—Parent Unable to Meet Special Needs of Child—Necessity.
- Juveniles—Torts—Negligence—Injury to Child—Multiple At-Fault Entities—At-Fault Parent—Parental Immunity—Allocation of Fault to Immune Parent—Propriety.
- Landlord and Tenant—Unlawful Detainer—Notice—Just Cause Termination—Compliance with Ordinance Language—Sufficiency—Existence of “Just Cause” for Termination of Tenancy—Trial—Necessity.
- Medical Treatment—Malpractice—Comparative Negligence—Contributory Fault—Failure to Follow Physician’s Advice and Instructions.
- Medical Treatment—Malpractice—Failure to Diagnose—Failure to Treat—Loss of Chance—Lost Chance of a Better Outcome—Causation—“But For” or “Substantial Factor” Causation.
- Mental Health—Involuntary Commitment—Probable Cause Hearing—Timeliness—Continuance—End of Period—Excluded Days.
- Mental Health—Involuntary Commitment—Sexually Violent Predators—Discharge or Release—Show Cause Hearing—Probable Cause—Change in Condition Since Last Commitment Trial or Less Restrictive Alternative Revocation Proceeding—Relevant Period.
- Open Government—Public Disclosure—Public Agency—What Constitutes—Functional Equivalence Test—Woodland Park Zoological Society.
- Personal Restraint—Criminal Law—Right to Public Trial—Jury Selection—Violation—Individual Questioning of Prospective Jurors—In Chambers—Invited Error—Defense Counsel’s Suggestion to Conduct In-Chambers Interviews—Ineffective Assistance of Counsel—On Appeal—Failure to Object to Closure of Trial.
- Personal Restraint—First Degree Murder—Creation of Grave Risk of Death—Trial—Instructions—Sufficiency—Elements—Knowledge and Disregard of Grave Risk of Death—Omission—Failure to Object—Claim of Ineffective Assistance of Trial and Appellate Counsel.
- Personal Restraint—Grounds—Exercise of Right to Trial—Sentence—Proportionality in Relation to Sentences for Accomplices Who Pleaded Guilty.
- Personal Restraint—Grounds—Ineffective Assistance of Counsel—On Appeal—Failure to File Reply Brief—Failure to Raise Issues—Failure to File Petition for Review in Supreme Court.

- Personal Restraint—Petition—Timeliness—Statutory Limits—Exceptions—Significant Change in Law—Appellate Decision—*Blazina* Holding—Imposition of Legal Financial Obligations—Boilerplate Finding of Ability to Pay.
- Personal Restraint—Transfer to Superior Court—Reference Hearing—Basis—Supporting Evidence—Sufficiency—Claim of Sleeping Judge and Jurors.
- Personal Restraint—Trial—Misconduct of Prosecutor—Argument—Defendant’s Exercise of Right to Remain Silent—Right to Counsel—Effective Assistance of Counsel—Withdrawal of Objection—Failure to Raise Issue on Appeal.
- Personal Restraint—Trial—Misconduct of Prosecutor—Argument—Racial Composition of Gang—Prejudice.
- Venue—Actions for Injury to Property—Location of Property—Action Against State—Action Against Corporate Defendant—Corporate Residence—Challenge to Venue—Waiver.

September Term 2016
Cases Set for Oral Argument

Assault, Criminal—Domestic Violence—Protection Order—Proceedings—Due Process—Oral Testimony—Cross-Examination—Necessity

Whether in this action in which the trial court issued a one-year protection order barring a father from having contact with his minor daughter on the basis of alleged abuse, the court violated a father’s due process rights by disallowing live testimony and cross-examination of witnesses.

No. 92631-0, *Aiken (respondent) v. Aiken (petitioner)*. (Oral argument 11/15/16).

[Unpublished.](#)

[Top](#)

Assault, Criminal—Second Degree Assault—Elements—Apprehension and Fear of Bodily Harm—Sufficiency of Evidence

Whether in this prosecution for second degree assault the State presented sufficient evidence that the defendant caused the victim to fear immediate bodily harm when the victim testified that after her group of friends were held at gunpoint she backed away, hid her backpack, walked to a neighbor’s house to get help, and described the incident as “unbelievable.”

No. 92605-1, *State (respondent) v. Houston-Sconiers and Roberts (petitioners)*. (Oral argument 10/18/16). (*See also*: [Criminal Law—Juveniles—Jurisdiction of Adult Court—Automatic Transfer—Mandatory Sentence Enhancements—Cruel and Unusual Punishment](#), [Criminal Law—Weapon—Enhanced Punishment—Firearm—Armed With Firearm—Proof—Nexus—Conspiracy](#)).

[191 Wn. App. 436 \(2015\).](#)

[Top](#)

Automobiles—Driving While Intoxicated—Blood or Breath Test—Advisement of Rights—Sufficiency—Variation From Statute—Failure to Warn of Legal Limit for Tetrahydrocannabinol (THC)—Testing Device Incapable of Measuring THC Level—Effect

Whether in this prosecution for driving while intoxicated, breath test results showing an illegal blood alcohol concentration obtained on a device incapable of measuring tetrahydrocannabinol (THC) blood concentration must be suppressed where the law enforcement officer administering the test failed to include the statutory THC blood concentration limit in an implied consent warning given before the test. *See* former [RCW 46.20.308\(2\)\(c\)\(i\) \(2013\)](#).

No. 92944-1, [State \(petitioner\) v. Robison \(respondent\)](#). (Oral argument 10/27/16).

Consolidated with No. 92930-1, [State \(petitioner\), v. Murray \(respondent\)](#).

[Unpublished.](#)

[Top](#)

Automobiles—Driving While Intoxicated—Blood or Breath Test—Advisement of Rights—Sufficiency—Variation From Statute—Failure to Warn of Legal Limit for Tetrahydrocannabinol (THC)—Use of Testing Device Incapable of Measuring THC Level—Effect

Whether in this prosecution for driving while intoxicated, breath test results showing an illegal blood alcohol concentration obtained on a device incapable of measuring tetrahydrocannabinol (THC) blood concentration must be suppressed where the law enforcement officer administering the test failed to include the statutory THC blood concentration limit in an implied consent warning given before the test. *See* former [RCW 46.20.308\(2\)\(c\)\(i\) \(2013\)](#).

No. 92930-1, [State \(petitioner\), v. Murray \(respondent\)](#). (Oral argument 10/27/16).

Consolidated with No. 92944-1, [State \(petitioner\) v. Robison \(respondent\)](#).

[Unpublished.](#)

[Top](#)

Aviation—Aircraft Failure, Malfunction, or Defect—Engine—Fuel System Components—Minimum Standards—Federal Aviation Act—Preemption of State Law Standard of Care—Implicit Preemption—Occupying Field

Whether in this negligence action arising from a fatal aircraft crash, the Federal Aviation Administration’s extensive regulation of the manufacture and design of fuel air systems implicitly preempts the Washington state law standards of care so as to bar state law claims against the corporation that assembled and welded allegedly faulty carburetor floats.

No. 92972-6, *Estate of Virgil Victor Becker, Jr. (petitioner) v. Forward Tech. Indus., Inc. (respondent)*. (Oral argument 11/8/16).

[192 Wn. App. 65 \(2015\)](#).

[Top](#)

Building Regulations—Land Use Regulations—Vested Rights—“Land Use Control Ordinances”—What Constitutes—Stormwater Drainage and Runoff Regulations—Federal Statutes—Preemption of State Law—Federal Clean Water Act

Whether a municipal ordinance regulating stormwater drainage and runoff is a land use control ordinance or a development standard or regulation subject to Washington’s vested rights doctrine, and if so, whether application of the vested rights doctrine in this case is preempted by the federal Water Pollution Control Act, [33 U.S.C. §§ 1251-1387](#). See [RCW 19.27.095\(1\)](#); [RCW 58.17.033\(1\)](#); [RCW 36.70B.180](#).

No. 92805-3, *Snohomish County, et al. (respondents) v. Pollution Control Hrg’s Bd., et al. (petitioners)*. (Oral argument 10/13/16).

[Puget Soundkeeper Alliance, et al. petition for review](#)
[Dep’t of Ecology petition for review](#)

[192 Wn. App. 316 \(2016\)](#).

[Top](#)

Civil Rights—Law Against Discrimination—Sexual Orientation Discrimination—Public Accommodations—Refusal of Business to Provide Services for Same Sex Marriage—Religious Objection—Constitutional Law—Freedom of Religion—Free Exercise—Freedom of Speech—Expressive Conduct—Freedom of Association—Expressive Association

Whether a florist’s refusal to provide flower arrangements for a same sex wedding on religious grounds violates the Law Against Discrimination, chapter [49.60 RCW](#), and the Consumer Protection Act, chapter [19.86 RCW](#), and if so, whether the imposition of liability infringes on the florist’s constitutional rights to free exercise of religion, freedom of speech, or freedom of association.

No. 91615-2, *Ingersoll, et al.* (respondents) v. *Arlene’s Flowers, Inc., et al.* (appellants). (Oral argument 11/15/16).

[Top](#)

Counties—Board of Commissioners—Powers—Employment of Outside Counsel—Validity—Objection of Elected County Prosecuting Attorney

Whether the Island County Board of Commissioners’ employment of outside counsel pursuant to [RCW 36.32.200](#) to advise the board on a land use matter over the county prosecutor’s objection unlawfully usurped the prosecutor’s role as elected county prosecutor under article XI, section 5 of the Washington Constitution.

No. 92749-9, *State* (petitioner) v. *Drummond, et al.* (respondents). (Oral argument 9/22/16).

[Top](#)

Criminal Law—Competency to Stand Trial—Pretrial Finding of Competence—Post-trial Finding of Incompetence—Standard of Competency—Necessity of Accommodations

Whether the trial court in a criminal prosecution applied an incorrect standard of law when it found after trial that the defendant was not competent to stand trial due to the absence of special accommodations that would have allowed him to understand the proceedings.

No. 92334-5, *State (respondent) v. Ortiz-Abrego (petitioner)*. (Oral report 9/22/16).

[Unpublished.](#)

[Top](#)

Criminal Law—Confessions—Admission as Evidence—Voluntariness of Confession—Denial of Access to Counsel—Delay in Preliminary Appearance

Whether in a prosecution for first degree premeditated murder the trial court erred in failing to suppress the defendant's custodial confession to detectives on the basis that his statements were involuntary and were procured in violation of the defendant's right to counsel, and because the defendant was not promptly brought before the trial court for a preliminary appearance.

No. 88906-6, *State (respondent) v. Scherf (appellant)*. (Oral argument 11/10/16). (*See also*: [Criminal Law—Punishment—Death Penalty—Jury—Selection—Challenge for Cause—Conviction Proneness](#); [Criminal Law—Punishment—Death Penalty—Jury—Selection—Challenge for Cause—Opposition to Death Penalty—Disqualification—Necessity](#); [Criminal Law—Punishment—Death Penalty—Review—Evidence—Sufficiency—Passion or Prejudice—Proportionality](#); [Criminal Law—Punishment—Death Penalty—Special Sentencing Procedure—Evidence—Circumstances of Crime—Defendant Serving Life Sentence](#); [Criminal Law—Punishment—Death Penalty—Special Sentencing Procedure—Mitigating Circumstances—Statutory Query—Instruction—Necessity of Unanimity to Answer “No”—Validity](#); [Criminal Law—Punishment—Death Penalty—Special Sentencing Procedure—Mitigating Evidence—Defendant's Attempt to Seek Treatment—Admission Conditioned on Admission of State's Rebuttal Evidence](#); [Criminal Law—Punishment—Death Penalty—Special Sentence Procedure—Notice—Decision to File—Review—Standard of Review—Statutory Provisions—Constitutionality](#); [Criminal Law—Punishment—Death Penalty—Special Sentence Procedure—Notice—Timing—Decision to File—Basis—Matters Considered—Investigation—Sufficiency](#); [Criminal Law—Punishment—Death Penalty—Trial—Jury—Deliberations—Instructions—Validity—Standard of Proof—Premeditation.](#))

[Top](#)

Criminal Law—Conspiracy—Subject Crime—Murder by Extreme Indifference to Human Life—Validity

Whether conspiracy to commit first degree murder by extreme indifference to human life is a valid crime.

No. 92412-1, *In the Matter of the Pers. Restraint of Sandoval* (petitioner). (Oral argument 11/8/16). (See also: [Criminal Law—Parties to Offenses—Accomplices—What Constitutes—Murder by Extreme Indifference to Human Life—Actual Knowledge of Principal’s Commission of Murder by Extreme Indifference—Necessity, Personal Restraint—Trial—Misconduct of Prosecutor—Argument—Racial Composition of Gang—Prejudice, Criminal Law—Evidence—Accomplice Testimony—Cautionary Instruction—Necessity, Personal Restraint—Grounds—Ineffective Assistance of Counsel—On Appeal—Failure to File Reply Brief—Failure to Raise Issues—Failure to File Petition for Review in Supreme Court, Personal Restraint—Grounds—Exercise of Right to Trial—Sentence—Proportionality in Relation to Sentences for Accomplices Who Pleaded Guilty](#)).

[Top](#)

Criminal Law—Crimes—Alternative Means of Committing Offense—Unanimity—Necessity

Whether in this prosecution for felony violation of a domestic violence protection order in which the State alleged and presented evidence on alternative means of committing the crime, reversal of the conviction is required because the trial court instructed the jury that it need not be unanimous as to which means the defendant committed as long as each juror agreed that the State had proven one of the means, and the prosecutor reiterated this instruction in closing argument.

No. 93119-4, *State (respondent) v. Armstrong* (petitioner). (Oral argument 12/1/16). (See also: [Criminal Law—Evidence—Preservation—Failure of State—Potentially Useful Evidence—Bad Faith—Surveillance Video](#)).

[Unpublished.](#)

[Top](#)

Criminal Law—Crimes—Alternative Means of Committing Offense—Unanimity—Necessity—Absence of Evidence of One Means

Whether in this prosecution for one count of second degree theft in which the State alleged theft both by wrongfully taking the property of another and by obtaining control over the same property by color and aid of deception, the trial court's failure to instruct the jury that it had to be unanimous as to the means by which the crime was committed was harmless when the State presented no evidence of theft by taking.

No. 91577-6, *State (respondent) v. Woodlyn (petitioner)*. (Oral argument 12/1/16).

[Unpublished.](#)

[Top](#)

Criminal Law—Evidence—Accomplice Testimony—Cautionary Instruction—Necessity

Whether in this prosecution for conspiracy to commit first degree murder by extreme indifference to human life and for first degree murder by extreme indifference to human life based on accomplice liability, the defendant was entitled to an instruction cautioning the jury to carefully examine the testimony of the defendant's accomplices.

No. 92412-1, *In the Matter of the Pers. Restraint of Sandoval* (petitioner). (Oral argument 11/8/16). (*See also*: [Criminal Law—Conspiracy—Subject Crime—Murder by Extreme Indifference to Human Life—Validity](#), [Criminal Law—Parties to Offenses—Accomplices—What Constitutes—Murder by Extreme Indifference to Human Life—Actual Knowledge of Principal's Commission of Murder by Extreme Indifference—Necessity](#), [Personal Restraint—Trial—Misconduct of Prosecutor—Argument—Racial Composition of Gang—Prejudice](#), [Personal Restraint—Grounds—Ineffective Assistance of Counsel—On Appeal—Failure to File Reply Brief—Failure to Raise Issues—Failure to File Petition for Review in Supreme Court](#), [Personal Restraint—Grounds—Exercise of Right to Trial—Sentence—Proportionality in Relation to Sentences for Accomplices Who Pleaded Guilty](#)).

[Top](#)

Criminal Law—Evidence—Other Offenses or Acts—Uncharged Criminal Act—Occurrence of Act—Proof—Sufficiency of Evidence

Whether in this prosecution for first degree murder and first degree assault based on a shooting, the State failed to present sufficient evidence that the defendant committed an earlier uncharged shooting that the trial court admitted into evidence under [ER 404\(b\)](#) for the purpose of proving the defendant's identity, motive, and intent in the charged shooting.

No. 92389-2, *State (respondent) v. Arredondo (petitioner)*. (Oral argument 10/13/16).
(See also: [Criminal Law—Right to Confront Witnesses—Cross-Examination—Mental Health Condition—Substance Abuse—Denial—Validity.](#))

[190 Wn. App. 512 \(2015\).](#)

[Top](#)

Criminal Law—Evidence—Preservation—Failure of State—Potentially Useful Evidence—Bad Faith—Surveillance Video

Whether in this criminal prosecution the State acted in bad faith in failing to preserve potentially useful evidence when police implied to the defendant that the crime was depicted on a surveillance video and that the video would be used as evidence against him but failed to collect and preserve any video.

No. 93119-4, *State (respondent) v. Armstrong (petitioner)*. (Oral argument 12/1/16).
(See also: [Criminal Law—Crimes—Alternative Means of Committing Offense—Unanimity—Necessity.](#))

[Unpublished.](#)

[Top](#)

Criminal Law—Former Jeopardy—Multiple Convictions—Same Offense—Second Degree Rape of Child and Second Degree Rape of a Physically Helpless or Mentally Incapacitated Person—Remedy—Lesser Offense—What Constitutes—General and Specific Rule of Statutory Construction—Applicability

Whether in a prosecution for both second degree child rape and second degree rape of a physically helpless or incapacitated person in which double jeopardy principles require vacation of one of the convictions, it is proper to apply the general-specific rule of statutory construction in deciding which conviction to vacate, and if so, whether second degree child rape and second degree rape are concurrent offenses, necessitating vacation of the second degree rape conviction as the general offense.

No. 92775-8, *State (petitioner) v. Albarran (respondent)*. (Oral argument 9/8/16).

[Top](#)

Criminal Law—Former Jeopardy—Multiple Convictions—Same Offense—What Constitutes—Unit of Prosecution—Second Degree Promoting Prostitution

Whether for double jeopardy purposes the unit of prosecution of second degree promoting prostitution is a single ongoing enterprise involving one or more prostitutes, or each transaction involving an individual prostitute. *See* [RCW 9A.88.080](#).

No. 92771-5, *State (respondent) v. Barbee (petitioner)*. (Oral argument 10/20/16). (*See also*: [Criminal Law—Punishment—Sentence—Outside Standard Range—Review—Incorrect Standard Range—Remedy](#)).

[Unpublished.](#)

[Top](#)

Criminal Law—Homicide—Punishment—Juvenile Defendant—Multiple Convictions—Presumptive Consecutive Standard Range Sentences—Effective Life Sentence—Validity—Eighth Amendment

Whether imposition on a juvenile defendant of consecutive sentences for multiple serious violent offenses under a statute that provides for presumptive consecutive sentencing constitutes cruel and unusual punishment in violation of the Eighth Amendment when the resulting sentence is effectively a life sentence.

No. 92454-6, *State (respondent) v. Ramos (petitioner)*. (Oral argument 10/20/16). (*See also*: [Criminal Law—Plea of Guilty—Plea Bargaining—Duty of State—Recommendation of Sentence—Scope of Duty—Sentencing Hearing—Answering Court’s Direct Questions.](#))

189 Wn. App. 431 (2015).

[Top](#)

Criminal Law—Juveniles—Jurisdiction of Adult Court—Automatic Transfer—Mandatory Sentence Enhancements—Cruel and Unusual Punishment

Whether in this prosecution of 16- and 17-year-old offenders on multiple charges of first degree robbery, second degree assault, and conspiracy to commit first degree robbery, all with firearm allegations, the automatic decline of juvenile court jurisdiction required for 16-to-17-year-olds accused of first degree robbery, and the imposition of mandatory consecutive firearm sentence enhancements on these offenders, constitute cruel and unusual punishment.

No. 92605-1, *State (respondent) v. Houston-Sconiers and Roberts (petitioners)*. (Oral argument 10/18/16). (*See also*: [Criminal Law—Weapon—Enhanced Punishment—Firearm—Armed With Firearm—Proof—Nexus—Conspiracy, Assault, Criminal—Second Degree Assault—Elements—Apprehension and Fear of Bodily Harm—Sufficiency of Evidence.](#))

191 Wn. App. 436 (2015).

[Top](#)

Criminal Law—Parties to Offenses—Accomplices—What Constitutes—Murder by Extreme Indifference to Human Life—Actual Knowledge of Principal’s Commission of Murder by Extreme Indifference—Necessity

Whether to convict a defendant of first degree murder by extreme indifference to human life as an accomplice, the State must prove that the defendant had actual knowledge that the principal committed the homicide by conduct that created a grave risk of death under circumstances manifesting an extreme indifference to human life.

No. 92412-1, *In the Matter of the Pers. Restraint of Sandoval* (petitioner). Oral argument 11/8/16. (See also: [Criminal Law—Conspiracy—Subject Crime—Murder by Extreme Indifference to Human Life—Validity, Personal Restraint—Trial—Misconduct of Prosecutor—Argument—Racial Composition of Gang—Prejudice, Criminal Law—Evidence—Accomplice Testimony—Cautionary Instruction—Necessity, Personal Restraint—Grounds—Ineffective Assistance of Counsel—On Appeal—Failure to File Reply Brief—Failure to Raise Issues—Failure to File Petition for Review in Supreme Court, Personal Restraint—Grounds—Exercise of Right to Trial—Sentence—Proportionality in Relation to Sentences for Accomplices Who Pleaded Guilty](#)).

[Top](#)

Criminal Law—Plea of Guilty—Plea Bargaining—Duty of State—Recommendation of Sentence—Scope of Duty—Sentencing Hearing—Answering Court’s Direct Questions

Whether the State breached the plea agreement in a criminal resentencing proceeding by answering the trial court’s direct questions concerning the court’s discretion to depart from the State’s recommendation and its discretion in resentencing.

No. 92454-6, *State* (respondent) *v. Ramos* (petitioner). (Oral argument 10/20/16). (See also: [Criminal Law—Homicide—Punishment—Juvenile Defendant—Multiple Convictions—Presumptive Consecutive Standard Range Sentences—Effective Life Sentence—Validity—Eighth Amendment](#)).

[189 Wn. App. 431 \(2015\)](#).

[Top](#)

Criminal Law—Punishment—Death Penalty—Jury—Selection—Challenge for Cause—Conviction Proneness

Whether in a death penalty prosecution involving the murder of a prison guard while the defendant was serving a life sentence, the defendant was entitled to the removal of several prospective jurors for cause on the basis that they indicated that they would support a death sentence under circumstances similar to the defendant's.

No. 88906-6, *State* (respondent) v. *Scherf* (appellant). (Oral argument 11/10/16). (*See also*: [Criminal Law—Confessions—Admission as Evidence—Voluntariness of Confession—Denial of Access to Counsel—Delay in Preliminary Appearance](#); [Criminal Law—Punishment—Death Penalty—Jury—Selection—Challenge for Cause—Opposition to Death Penalty—Disqualification—Necessity](#); [Criminal Law—Punishment—Death Penalty—Review—Evidence—Sufficiency—Passion or Prejudice—Proportionality](#); [Criminal Law—Punishment—Death Penalty—Special Sentencing Procedure—Evidence—Circumstances of Crime—Defendant Serving Life Sentence](#); [Criminal Law—Punishment—Death Penalty—Special Sentencing Procedure—Mitigating Circumstances—Statutory Query—Instruction—Necessity of Unanimity to Answer “No”—Validity](#); [Criminal Law—Punishment—Death Penalty—Special Sentencing Procedure—Mitigating Evidence—Defendant’s Attempt to Seek Treatment—Admission Conditioned on Admission of State’s Rebuttal Evidence](#); [Criminal Law—Punishment—Death Penalty—Special Sentence Procedure—Notice—Decision to File—Review—Standard of Review—Statutory Provisions—Constitutionality](#); [Criminal Law—Punishment—Death Penalty—Special Sentence Procedure—Notice—Timing—Decision to File—Basis—Matters Considered—Investigation—Sufficiency](#); [Criminal Law—Punishment—Death Penalty—Trial—Jury—Deliberations—Instructions—Validity—Standard of Proof—Premeditation](#)).

Criminal Law—Punishment—Death Penalty—Jury—Selection—Challenge for Cause—Opposition to Death Penalty—Disqualification—Necessity

Whether in a death penalty prosecution the trial court erred in removing two jurors for cause on the basis of their stated opposition to the death penalty.

No. 88906-6, *State* (respondent) *v. Scherf* (appellant). (Oral argument 11/10/16). (*See also*: [Criminal Law—Confessions—Admission as Evidence—Voluntariness of Confession—Denial of Access to Counsel—Delay in Preliminary Appearance](#); [Criminal Law—Punishment—Death Penalty—Jury—Selection—Challenge for Cause—Conviction Proneness](#); [Criminal Law—Punishment—Death Penalty—Review—Evidence—Sufficiency—Passion or Prejudice—Proportionality](#); [Criminal Law—Punishment—Death Penalty—Special Sentencing Procedure—Evidence—Circumstances of Crime—Defendant Serving Life Sentence](#); [Criminal Law—Punishment—Death Penalty—Special Sentencing Procedure—Mitigating Circumstances—Statutory Query—Instruction—Necessity of Unanimity to Answer “No”—Validity](#); [Criminal Law—Punishment—Death Penalty—Special Sentencing Procedure—Mitigating Evidence—Defendant’s Attempt to Seek Treatment—Admission Conditioned on Admission of State’s Rebuttal Evidence](#); [Criminal Law—Punishment—Death Penalty—Special Sentence Procedure—Notice—Decision to File—Review—Standard of Review—Statutory Provisions—Constitutionality](#); [Criminal Law—Punishment—Death Penalty—Special Sentence Procedure—Notice—Timing—Decision to File—Basis—Matters Considered—Investigation—Sufficiency](#); [Criminal Law—Punishment—Death Penalty—Trial—Jury—Deliberations—Instructions—Validity—Standard of Proof—Premeditation](#)).

Top

Criminal Law—Punishment—Death Penalty—Review—Evidence—Sufficiency—Passion or Prejudice—Proportionality

Whether the sentence of death imposed in this prosecution for aggravated first degree murder is unsupported by the evidence, is the result of passion and prejudice, and is disproportionate to sentences imposed in other cases.

No. 88906-6 *State* (respondent) v. *Scherf* (appellant). (Oral argument 11/10/16). (*See also*: [Criminal Law—Confessions—Admission as Evidence—Voluntariness of Confession—Denial of Access to Counsel—Delay in Preliminary Appearance](#); [Criminal Law—Punishment—Death Penalty—Jury—Selection—Challenge for Cause—Conviction Proneness](#); [Criminal Law—Punishment—Death Penalty—Jury—Selection—Challenge for Cause—Opposition to Death Penalty—Disqualification—Necessity](#); [Criminal Law—Punishment—Death Penalty—Special Sentencing Procedure—Evidence—Circumstances of Crime—Defendant Serving Life Sentence](#); [Criminal Law—Punishment—Death Penalty—Special Sentencing Procedure—Mitigating Circumstances—Statutory Query—Instruction—Necessity of Unanimity to Answer “No”—Validity](#); [Criminal Law—Punishment—Death Penalty—Special Sentencing Procedure—Mitigating Evidence—Defendant’s Attempt to Seek Treatment—Admission Conditioned on Admission of State’s Rebuttal Evidence](#); [Criminal Law—Punishment—Death Penalty—Special Sentence Procedure—Notice—Decision to File—Review—Standard of Review—Statutory Provisions—Constitutionality](#); [Criminal Law—Punishment—Death Penalty—Special Sentence Procedure—Notice—Timing—Decision to File—Basis—Matters Considered—Investigation—Sufficiency](#); [Criminal Law—Punishment—Death Penalty—Trial—Jury—Deliberations—Instructions—Validity—Standard of Proof—Premeditation](#)).

**Criminal Law—Punishment—Death Penalty—Special Sentencing Procedure—
Evidence—Circumstances of Crime—Defendant Serving Life Sentence**

Whether in a death penalty prosecution it was unfairly prejudicial to allow the jury to hear evidence that the defendant was serving a life sentence without the possibility of early release when he killed a prison guard.

No. 88906-6, *State* (respondent) *v. Scherf* (appellant). (Oral argument 11/10/16). (*See also*: [Criminal Law—Confessions—Admission as Evidence—Voluntariness of Confession—Denial of Access to Counsel—Delay in Preliminary Appearance](#); [Criminal Law—Punishment—Death Penalty—Jury—Selection—Challenge for Cause—Conviction Proneness](#); [Criminal Law—Punishment—Death Penalty—Jury—Selection—Challenge for Cause—Opposition to Death Penalty—Disqualification—Necessity](#); [Criminal Law—Punishment—Death Penalty—Review—Evidence—Sufficiency—Passion or Prejudice—Proportionality](#); [Criminal Law—Punishment—Death Penalty—Special Sentencing Procedure—Mitigating Circumstances—Statutory Query—Instruction—Necessity of Unanimity to Answer “No”—Validity](#); [Criminal Law—Punishment—Death Penalty—Special Sentencing Procedure—Mitigating Evidence—Defendant’s Attempt to Seek Treatment—Admission Conditioned on Admission of State’s Rebuttal Evidence](#); [Criminal Law—Punishment—Death Penalty—Special Sentence Procedure—Notice—Decision to File—Review—Standard of Review—Statutory Provisions—Constitutionality](#); [Criminal Law—Punishment—Death Penalty—Special Sentence Procedure—Notice—Timing—Decision to File—Basis—Matters Considered—Investigation—Sufficiency](#); [Criminal Law—Punishment—Death Penalty—Trial—Jury—Deliberations—Instructions—Validity—Standard of Proof—Premeditation](#)).

Criminal Law—Punishment—Death Penalty—Special Sentencing Procedure—Mitigating Circumstances—Statutory Query—Instruction—Necessity of Unanimity to Answer “No”—Validity

Whether in a death penalty prosecution the trial court correctly instructed the jury that it had to be unanimous in answering “‘yes’ or ‘no’” to the question whether there were not sufficient mitigating circumstances to merit leniency.

No. 88906-6, *State* (respondent) v. *Scherf* (appellant). (Oral argument 11/10/16). (*See also*: [Criminal Law—Confessions—Admission as Evidence—Voluntariness of Confession—Denial of Access to Counsel—Delay in Preliminary Appearance](#); [Criminal Law—Punishment—Death Penalty—Jury—Selection—Challenge for Cause—Conviction Proneness](#); [Criminal Law—Punishment—Death Penalty—Jury—Selection—Challenge for Cause—Opposition to Death Penalty—Disqualification—Necessity](#); [Criminal Law—Punishment—Death Penalty—Review—Evidence—Sufficiency—Passion or Prejudice—Proportionality](#); [Criminal Law—Punishment—Death Penalty—Special Sentencing Procedure—Evidence—Circumstances of Crime—Defendant Serving Life Sentence](#); [Criminal Law—Punishment—Death Penalty—Special Sentencing Procedure—Mitigating Evidence—Defendant’s Attempt to Seek Treatment—Admission Conditioned on Admission of State’s Rebuttal Evidence](#); [Criminal Law—Punishment—Death Penalty—Special Sentence Procedure—Notice—Decision to File—Review—Standard of Review—Statutory Provisions—Constitutionality](#); [Criminal Law—Punishment—Death Penalty—Special Sentence Procedure—Notice—Timing—Decision to File—Basis—Matters Considered—Investigation—Sufficiency](#); [Criminal Law—Punishment—Death Penalty—Trial—Jury—Deliberations—Instructions—Validity—Standard of Proof—Premeditation](#)).

Criminal Law—Punishment—Death Penalty—Special Sentencing Procedure—Mitigating Evidence—Defendant’s Attempt to Seek Treatment—Admission Conditioned on Admission of State’s Rebuttal Evidence

Whether in the death penalty phase of an aggravated first degree murder prosecution, the trial court erroneously conditioned the defendant’s presentation of mitigation evidence that he had tried to obtain sex offender treatment on the State being allowed to present rebuttal evidence that the defendant was not amenable to treatment.

No. 88906-6, *State* (respondent) v. *Scherf* (appellant). (Oral argument 11/10/16). (*See also*: [Criminal Law—Confessions—Admission as Evidence—Voluntariness of Confession—Denial of Access to Counsel—Delay in Preliminary Appearance](#); [Criminal Law—Punishment—Death Penalty—Jury—Selection—Challenge for Cause—Conviction Proneness](#); [Criminal Law—Punishment—Death Penalty—Jury—Selection—Challenge for Cause—Opposition to Death Penalty—Disqualification—Necessity](#); [Criminal Law—Punishment—Death Penalty—Review—Evidence—Sufficiency—Passion or Prejudice—Proportionality](#); [Criminal Law—Punishment—Death Penalty—Special Sentencing Procedure—Evidence—Circumstances of Crime—Defendant Serving Life Sentence](#); [Criminal Law—Punishment—Death Penalty—Special Sentencing Procedure—Mitigating Circumstances—Statutory Query—Instruction—Necessity of Unanimity to Answer “No”—Validity](#); [Criminal Law—Punishment—Death Penalty—Special Sentence Procedure—Notice—Decision to File—Review—Standard of Review—Statutory Provisions—Constitutionality](#); [Criminal Law—Punishment—Death Penalty—Special Sentence Procedure—Notice—Timing—Decision to File—Basis—Matters Considered—Investigation—Sufficiency](#); [Criminal Law—Punishment—Death Penalty—Trial—Jury—Deliberations—Instructions—Validity—Standard of Proof—Premeditation](#)).

**Criminal Law—Punishment—Death Penalty—Special Sentence Procedure—
Notice—Decision to File—Review—Standard of Review—Statutory Provisions—
Constitutionality**

Whether a prosecutor’s decision to file a death penalty notice is reviewable by the trial court on the basis of whether the decision is objectively reasonable, and if it is not reviewable on that basis under Washington’s death penalty statute, whether the statute is unconstitutional.

No. 88906-6, *State* (respondent) *v. Scherf* (appellant). (Oral argument 11/10/16). (*See also*: [Criminal Law—Confessions—Admission as Evidence—Voluntariness of Confession—Denial of Access to Counsel—Delay in Preliminary Appearance](#); [Criminal Law—Punishment—Death Penalty—Jury—Selection—Challenge for Cause—Conviction Proneness](#); [Criminal Law—Punishment—Death Penalty—Jury—Selection—Challenge for Cause—Opposition to Death Penalty—Disqualification—Necessity](#); [Criminal Law—Punishment—Death Penalty—Review—Evidence—Sufficiency—Passion or Prejudice—Proportionality](#); [Criminal Law—Punishment—Death Penalty—Special Sentencing Procedure—Evidence—Circumstances of Crime—Defendant Serving Life Sentence](#); [Criminal Law—Punishment—Death Penalty—Special Sentencing Procedure—Mitigating Circumstances—Statutory Query—Instruction—Necessity of Unanimity to Answer “No”—Validity](#); [Criminal Law—Punishment—Death Penalty—Special Sentencing Procedure—Mitigating Evidence—Defendant’s Attempt to Seek Treatment—Admission Conditioned on Admission of State’s Rebuttal Evidence](#); [Criminal Law—Punishment—Death Penalty—Special Sentence Procedure—Notice—Timing—Decision to File—Basis—Matters Considered—Investigation—Sufficiency](#); [Criminal Law—Punishment—Death Penalty—Trial—Jury—Deliberations—Instructions—Validity—Standard of Proof—Premeditation](#)).

Top

**Criminal Law—Punishment—Death Penalty—Special Sentence Procedure—
Notice—Timing—Decision to File—Basis—Matters Considered—Investigation—
Sufficiency**

Whether in a death penalty case prosecution the prosecutor’s notice of intent to seek the death penalty should have been dismissed on the basis that the notice was filed before arraignment and without adequate consideration of mitigating evidence.

No. 88906-6, *State* (respondent) v. *Scherf* (appellant). (Oral argument 11/10/16). (*See also*: [Criminal Law—Confessions—Admission as Evidence—Voluntariness of Confession—Denial of Access to Counsel—Delay in Preliminary Appearance](#); [Criminal Law—Punishment—Death Penalty—Jury—Selection—Challenge for Cause—Conviction Proneness](#); [Criminal Law—Punishment—Death Penalty—Jury—Selection—Challenge for Cause—Opposition to Death Penalty—Disqualification—Necessity](#); [Criminal Law—Punishment—Death Penalty—Review—Evidence—Sufficiency—Passion or Prejudice—Proportionality](#); [Criminal Law—Punishment—Death Penalty—Special Sentencing Procedure—Evidence—Circumstances of Crime—Defendant Serving Life Sentence](#); [Criminal Law—Punishment—Death Penalty—Special Sentencing Procedure—Mitigating Circumstances—Statutory Query—Instruction—Necessity of Unanimity to Answer “No”—Validity](#); [Criminal Law—Punishment—Death Penalty—Special Sentencing Procedure—Mitigating Evidence—Defendant’s Attempt to Seek Treatment—Admission Conditioned on Admission of State’s Rebuttal Evidence](#); [Criminal Law—Punishment—Death Penalty—Special Sentence Procedure—Notice—Decision to File—Review—Standard of Review—Statutory Provisions—Constitutionality](#); [Criminal Law—Punishment—Death Penalty—Trial—Jury—Deliberations—Instructions—Validity—Standard of Proof—Premeditation](#)).

Criminal Law—Punishment—Death Penalty—Trial—Jury—Deliberations—Instructions—Validity—Standard of Proof—Premeditation

Whether, in a first degree premeditated murder case, the court properly instructed the jury on the standard of proof of premeditation by using the pattern instruction found at 11 WASHINGTON PRACTICE: WASHINGTON PATTERN JURY INSTRUCTIONS: CRIMINAL 26.01.01 (3d ed. 2008) (WPIC 26.01.01).

No. 88906-6, *State* (respondent) v. *Scherf* (appellant). (Oral argument 11/10/16). (*See also*: [Criminal Law—Confessions—Admission as Evidence—Voluntariness of Confession—Denial of Access to Counsel—Delay in Preliminary Appearance](#); [Criminal Law—Punishment—Death Penalty—Jury—Selection—Challenge for Cause—Conviction Proneness](#); [Criminal Law—Punishment—Death Penalty—Jury—Selection—Challenge for Cause—Opposition to Death Penalty—Disqualification—Necessity](#); [Criminal Law—Punishment—Death Penalty—Review—Evidence—Sufficiency—Passion or Prejudice—Proportionality](#); [Criminal Law—Punishment—Death Penalty—Special Sentencing Procedure—Evidence—Circumstances of Crime—Defendant Serving Life Sentence](#); [Criminal Law—Punishment—Death Penalty—Special Sentencing Procedure—Mitigating Circumstances—Statutory Query—Instruction—Necessity of Unanimity to Answer “No”—Validity](#); [Criminal Law—Punishment—Death Penalty—Special Sentencing Procedure—Mitigating Evidence—Defendant’s Attempt to Seek Treatment—Admission Conditioned on Admission of State’s Rebuttal Evidence](#); [Criminal Law—Punishment—Death Penalty—Special Sentence Procedure—Notice—Decision to File—Review—Standard of Review—Statutory Provisions—Constitutionality](#); [Criminal Law—Punishment—Death Penalty—Special Sentence Procedure—Notice—Timing—Decision to File—Basis—Matters Considered—Investigation—Sufficiency](#)).

Criminal Law—Punishment—Sentence—Financial Assessments—Ability to Pay—Discretionary Assessments—Review—Issue First Raised on Appeal

Whether in this criminal prosecution the trial court imposed discretionary legal financial obligations without determining on the record the defendant’s ability to pay, and if so, whether relief should be granted pursuant to *State v. Blazina*, 182 Wn.2d 827, 344 P.3d 680 (2015).

No. 92475-9, *State* (respondent) *v. Lee* (petitioner). (Oral argument 9/22/16). (*See also*: [Criminal Law—Right to Confront Witnesses—Scope—Cross-Examination—Restriction—Complaining Witness—Prior False Accusation—Nature of Accusation—Harmless Error](#); [Criminal Law—Trial—Time of Trial—Constitutional Right—Appeal—Review—Issues not Raised in Trial Court—Constitutional Rights—“Manifest” Error](#)).

Unpublished

[Top](#)

Criminal Law—Punishment—Sentence—Outside Standard Range—Review—Incorrect Standard Range—Remedy

Whether resentencing on an exceptional sentence is required in this case where the trial court employed an incorrect standard sentence range but stated that it would impose the same sentence on the basis of any one of the aggravating factors found.

No. 92771-5, *State* (respondent) *v. Barbee* (petitioner). (Oral argument 10/20/16). (*See also*: [Criminal Law—Former Jeopardy—Multiple Convictions—Same Offense—What Constitutes—Unit of Prosecution—Second Degree Promoting Prostitution](#)).

Unpublished.

[Top](#)

Criminal Law—Right to Confront Witnesses—Cross-Examination—Mental Health Condition—Substance Abuse—Denial—Validity

Whether in this murder and assault prosecution in which the State presented the testimony of a jail cellmate asserting that the defendant had admitted to committing the crimes, the trial court violated the defendant's Sixth Amendment right to confront witnesses when it barred the defendant from cross-examining the witness about documented mental impairments and drug abuse, which the witness said affected his short-term memory but not his long-term memory.

No. 92389-2, *State* (respondent) *v. Arredondo* (petitioner). (Oral argument 10/13/16). (See also: [Criminal Law—Evidence—Other Offenses or Acts—Uncharged Criminal Act—Occurrence of Act—Proof—Sufficiency of Evidence.](#))

[190 Wn. App. 512 \(2015\).](#)

[Top](#)

Criminal Law—Right to Confront Witnesses—Scope—Cross-Examination—Restriction—Complaining Witness—Prior False Accusation—Nature of Accusation—Harmless Error

Whether in a prosecution for third degree rape of a child, the trial court erred in allowing the defendant to ask the victim on cross-examination whether she had previously made a false criminal accusation against another person but prohibited the defendant from asking whether the prior accusation was one of rape, and if so, whether the error was harmless.

No. 92475-9, *State* (respondent) *v. Lee* (petitioner). (Oral argument 9/22/16). (See also: [Criminal Law—Trial—Time of Trial—Constitutional Right—Appeal—Review—Issues not Raised in Trial Court—Constitutional Rights—“Manifest” Error; Criminal Law—Punishment—Sentence—Financial Assessments—Ability to Pay—Discretionary Assessments—Review—Issue First Raised on Appeal.](#))

[Unpublished](#)

[Top](#)

**Criminal Law—Trial—Time of Trial—Constitutional Right—Appeal—Review—
Issues not Raised in Trial Court—Constitutional Rights—“Manifest” Error**

Whether in a criminal prosecution a four-year delay in bringing the case to trial amounted to manifest constitutional error that could be first raised on appeal under [RAP 2.5\(a\)\(3\)](#).

No. 92475-9, *State* (respondent) *v. Lee* (petitioner). (Oral argument 9/22/16). (*See also*: [Criminal Law—Right to Confront Witnesses—Scope—Cross-Examination—Restriction—Complaining Witness—Prior False Accusation—Nature of Accusation—Harmless Error](#); [Criminal Law—Punishment—Sentence—Financial Assessments—Ability to Pay—Discretionary Assessments—Review—Issue First Raised on Appeal](#)).

Unpublished

[Top](#)

**Criminal Law—Weapon—Enhanced Punishment—Firearm—Armed With
Firearm—Proof—Nexus—Conspiracy**

Whether in this prosecution for conspiracy to commit first degree robbery with a firearm allegation, the State proved a nexus between the firearm and the conspiracy for purposes of a firearm sentence enhancement when a group of coconspirators robbed pedestrians at gunpoint.

No. 92605-1, *State* (respondent) *v. Houston-Sconiers and Roberts* (petitioners). (Oral argument 10/18/16). (*See also*: [Criminal Law—Juveniles—Jurisdiction of Adult Court—Automatic Transfer—Mandatory Sentence Enhancements—Cruel and Unusual Punishment, Assault, Criminal—Second Degree Assault—Elements—Apprehension and Fear of Bodily Harm—Sufficiency of Evidence](#)).

[191 Wn. App. 436 \(2015\)](#).

[Top](#)

Divorce—Child Custody—Factors—Sexual Orientation of Parent—Religion of Parent—Best Interests of Child—Stability

Whether in this marriage dissolution proceeding filed by the wife after informing the husband that she is a lesbian, the trial court abused its discretion in designating the husband as the primary residential parent of the parties' children based in part on the testimony of the children's therapist that it would be difficult for the children to reconcile their religious upbringing with the changes occurring within their family and that the children currently needed stability.

No. 92994-7, *Black (petitioner) v. Black (respondent)*. (Oral argument 11/17/16). (*See also*: [Divorce—Parenting Plan—Sole Decision-Making Rights—Educational Instruction—Freedom of Religion](#); [Divorce—Maintenance—Need of Recipient—Ability to Pay](#)).

Unpublished.

[Top](#)

Divorce—Child Support—Enforcement—Foreign State's Order—Timeliness of Enforcement Action—Applicable State Law

Whether in this action to withhold wages to enforce an Indiana child support order registered in this state pursuant to the Uniform Interstate Family Support Act, chapter [26.21A RCW](#), the timeliness of the enforcement action is governed by Washington law or Indiana law.

No. 92620-4, *In re the Paternity of M.H., Bell (petitioner) v. Heflin (respondent)*. (Oral argument 9/20/16).

Unpublished.

[Top](#)

Divorce—Child Support—Medical Expenses—“Uninsured Medical Expenses”—What Constitutes

Whether a child support order requiring the father to provide health insurance for his children and also to pay all of the children’s “uninsured medical expenses” required the father to pay all of the expenses of one child’s surgery that the father’s health insurer would not cover because the child’s mother procured the surgery from an out-of-network hospital without the insurer’s authorization. *Cf.* [RCW 26.18.170\(17\)\(d\)](#) (meaning of “uninsured medical expenses”); [WAC 388-144-1020](#) (same).

No. 92296-9, *In re the Marriage of Zandi, Jr. (petitioner) v. Zandi (respondent)*. (Oral argument 10/25/16).

[190 Wn. App. 51 \(2015\)](#).

[Top](#)

Divorce—Maintenance—Need of Recipient—Ability to Pay

Whether in this marriage dissolution proceeding the trial court abused its discretion in denying the wife’s request for spousal maintenance where she had stayed at home with the children throughout the marriage, did not have an independent source of income at the time of trial, and was in need of maintenance but the husband lacked the ability to pay.

No. 92994-7, *Black (petitioner) v. Black (respondent)*. (Oral argument 11/17/16). (*See also:* [Divorce—Child Custody—Factors—Sexual Orientation of Parent—Religion of Parent—Best Interests of Child—Stability](#); [Divorce—Parenting Plan—Sole Decision-Making Rights—Educational Instruction—Freedom of Religion](#)).

Unpublished.

[Top](#)

Divorce—Parenting Plan—Sole Decision-Making Rights—Educational Instruction—Freedom of Religion

Whether in this marriage dissolution proceeding the trial court abused its discretion and violated the wife's constitutional right to the free exercise of religion when it allocated to the husband sole decision-making authority over the education of the parties' children where the husband wanted to maintain the children's enrollment in the private schools of a religion that disapproved of the wife's sexual orientation and the wife wanted the children to attend public schools.

No. 92994-7, *Black* (petitioner) v. *Black* (respondent). (Oral argument 11/17/16). (*See also*: [Divorce—Child Custody—Factors—Sexual Orientation of Parent—Religion of Parent—Best Interests of Child—Stability](#); [Divorce—Maintenance—Need of Recipient—Ability to Pay](#)).

[Unpublished.](#)

[Top](#)

Employment—Compensation—Damages for Nonpayment of Wages—Personal Liability—Termination of Employment of Officer, Vice Principal or Agent Before Wages Became Due—Bankruptcy Proceedings—Effect

Whether the termination of employment of an officer, vice principal, or agent of an employer shields the officer, vice principal, or agent from liability under the Wage Rebate Act, chapter [49.52 RCW](#), for the deprivation of wages that became due after the termination, even if the officer, vice principal, or agent participated in the decision to file a Chapter 7 bankruptcy that effectively resulted in his or her termination.

No. 93056-2, *Allen* (plaintiff), v. *Dameron, IV, et al.* (defendants). (Oral argument 10/18/16).

C14-1263RSL, Certified from the United States District Court for the W. Dist. of Wash.

[Top](#)

**Employment—Vicarious Liability—Loaned Employee—Borrowed Servant
Doctrine—General Employer Liability—Intermediary Lender**

Whether in this workplace personal injury lawsuit, the at-fault worker was acting as a “borrowed servant” of the injured worker’s employer so as to preclude vicarious liability of the at-fault worker’s general employer and a third party intermediary between the at-fault worker’s general employer and the injured worker’s employer.

No. 92362-1, *Wilcox (petitioner) v. Basehore, et al. (respondents)*. (Oral argument 10/25/16)

[189 Wn. App. 63 \(2015\)](#).

[Top](#)

**Environment—Shoreline Management—Development—Oil Transportation
Facility—Ocean Resources Management Act—Applicability**

Whether a proposal to build a facility in the Port of Grays Harbor County to receive crude oil from trains, store the oil in tanks, and transfer the oil to vessels for shipment is an “ocean use” or “ocean transportation use” subject to the Ocean Resources Management Act, chapter [43.143 RCW](#), requiring the city of Hoquiam and the Department of Ecology to consider the criteria listed in the act before issuing permits for the project. *See* [RCW 43.143.030\(2\)\(a\)-\(h\)](#).

No. 92552-6, *Quinault Indian Nation, et al. (petitioners) v. City of Hoquiam, et al. (respondents)*. (Oral argument 10/13/16).

[190 Wn. App. 696 \(2015\)](#).

[Top](#)

Financial Institutions—Bills and Notes—Negotiation of Bank Check—Bank’s Duty of Ordinary Care—Breach—Absence of Payee Indorsement

Whether a bank fails to exercise ordinary care as a matter of law if it pays a check to a nonpayee when the check contains no indorsement in the payee’s name.

No. 92483-0, *Travelers Cas. And Surety Co.* (plaintiff), *v. Wash. Trust Bank* (defendant). (Oral argument 9/8/16) (*See also*: [Financial Institutions—Bills and Notes—Negotiation of Bank Check—Indorsement by Nonpayee—Liability of Bank—Preclusion of Action for Failure of Account Holder to Timely Discover and Report Unauthorized Signature, Alteration, or Unauthorized Indorsement—Applicability to Indorsement by Nonpayee](#); [Financial Institutions—Bills and Notes—Negotiation of Bank Check—Indorsement by Nonpayee—Notice to Account Holder—Sufficiency—Images of Checks in On-Line Account Statement](#)).

Certified from United States Dist. Court for the Eastern Dist. of Wash.
No. CV-13-0409-JLQ (E. D. Wash.)

[Top](#)

Financial Institutions—Bills and Notes—Negotiation of Bank Check—Indorsement by Nonpayee—Liability of Bank—Preclusion of Action for Failure of Account Holder to Timely Discover and Report Unauthorized Signature, Alteration, or Unauthorized Indorsement—Applicability to Indorsement by Nonpayee

Whether in a federal action against a bank alleging it breached its duty of care when it cashed checks indorsed by someone other than the payee, the indorsement constituted an “unauthorized signature,” “alteration,” or “unauthorized indorsement” within the meaning of [RCW 62A.4-406\(f\)](#), under which a bank customer’s action against the bank is precluded unless within a certain time after the bank statement and items are made available to the customer, the customer discovers and reports the unauthorized signature or indorsement or alteration.

No. 92483-0, *Travelers Cas. And Surety Co.* (plaintiff), v. *Wash. Trust Bank* (defendant). (Oral argument 9/8/16). (See also: [Financial Institutions—Bills and Notes—Negotiation of Bank Check—Indorsement by Nonpayee—Notice to Account Holder—Sufficiency—Images of Checks in On-Line Account Statement; Financial Institutions—Bills and Notes—Negotiation of Bank Check—Bank’s Duty of Ordinary Care—Breach—Absence of Payee Indorsement](#)).

Certified from United States Dist. Court for the Eastern Dist. of Wash.
No. CV-13-0409-JLQ (E. D. Wash.)

[Top](#)

Financial Institutions—Bills and Notes—Negotiation of Bank Check—Indorsement by Nonpayee—Notice to Account Holder—Sufficiency—Images of Checks in On-Line Account Statement

Whether in a federal action against a bank alleging it breached its duty of care when it cashed checks indorsed on the back by someone other than the payee, the bank customer had notice of the improper indorsement, thereby triggering its obligation to notify the bank pursuant to [RCW 62.4-406\(f\)](#) or lose its right of action, where images of the backs of the cancelled checks did not appear on the written monthly statements provided to the customer but were available to the customer on the bank's on-line banking website.

No. 92483-0, *Travelers Cas. And Surety Co.* (plaintiff), *v. Wash. Trust Bank* (defendant). (Oral argument 9/8/16). (See also: [Financial Institutions—Bills and Notes—Negotiation of Bank Check—Indorsement by Nonpayee—Liability of Bank—Preclusion of Action for Failure of Account Holder to Timely Discover and Report Unauthorized Signature, Alteration, or Unauthorized Indorsement—Applicability to Indorsement by Nonpayee](#); [Financial Institutions—Bills and Notes—Negotiation of Bank Check—Bank's Duty of Ordinary Care—Breach—Absence of Payee Indorsement](#)).

Certified from United States Dist. Court for the Eastern Dist. of Wash.
No. CV-13-0409-JLQ (E. D. Wash.)

[Top](#)

Indians—Taxation—Motor Vehicle Fuel Tax—Importation of Fuel from Oregon—Sales to Retailers Within Reservation—Treaty Preemption of State Taxation—Yakama Treaty—Right to Travel Upon Public Highways

Whether the Yakama Treaty provision granting tribal members the right in common with citizens to travel upon all public highways precludes the State from imposing its motor vehicle fuel tax on gasoline imported from Oregon by a company owned by a tribal member who sells the gasoline to Yakama Reservation retailers.

No. 92289-6, *Cougar Den, Inc.* (respondent) *v. Wash. State Dep't of Licensing* (petitioner). (Oral argument 10/11/16).

[Top](#)

Industrial Insurance—Disability—Occupational Disease—Firefighters—Burden Shifting Provision—Rebuttable Evidentiary Presumption—Burdens of Production and Persuasion—Discharge of Burden

Whether the presumption under [RCW 51.32.185\(1\)\(c\)](#) that a firefighter's melanoma form of skin cancer is an occupational disease for industrial insurance purposes establishes only a burden of production that dissolves upon the employer's presentation of some rebuttal evidence, or also establishes a burden of persuasion requiring the employer to overcome the presumption to the satisfaction of the trier of fact based on all of the evidence at trial.

No. 92197-1, [Larson \(respondent\) v. City of Bellevue \(petitioner\)](#). (Oral argument 11/17/16).

Consolidated with:

No. 91680-2, [Spivey \(movant\) v. City of Bellevue, et al.](#) (respondents).

[188 Wn. App. 857 \(2015\)](#).

[Top](#)

Industrial Insurance—Third Person Action—Coworkers—Immunity—Course of Employment—Working for Employer at Time of Injury—Necessity

Whether for purposes of coworker immunity from personal injury suit under the Industrial Insurance Act, a Boeing employee while leaving work in his car at the end of his shift was acting in the course of employment when he struck another employee walking on a Boeing access road.

No. 92581-0, [Entila, et ux. \(respondents\) v. Cook, et ux. \(petitioners\)](#). (Oral argument 9/20/16).

[190 Wn. App. 477 \(2015\)](#).

[Top](#)

Insurance—Duty to Defend—Scope—Exclusions—Pollution Exclusion—Release of Carbon Monoxide Poisoning Due to Negligently Installed Water Heater

Whether a pollution exclusion in an insurance policy applied to the release of carbon monoxide caused by the insured’s negligent installation of a residential water heater, thus relieving the insurer from a duty to defend the insured in a personal injury action stemming from carbon monoxide poisoning.

No. 92436-8, *Xia, et al. (petitioners) v. Probuilders Specialty Ins. Co., et al. (respondents)*. (Oral argument 10/11/16).

[Unpublished.](#)

[Top](#)

Insurance—Statutory Provisions—Insurance Fair Conduct Act—Construction—Private Cause of Action—Scope—Violation of Insurance Regulations

Whether the Insurance Fair Conduct Act, which provides that a first party claimant to an insurance policy “who is unreasonably denied a claim for coverage or payment of benefits by an insurer may bring an action” for damages, [RCW 48.30.015\(1\)](#), creates a private cause of action for violation of any of the insurance regulations listed in the act independent of a denial of coverage or a denial of benefits, *see* [RCW 48.30.015\(5\)](#), and if so, whether an issue of fact exists as to whether the insurer violated a regulation making it an unfair practice to compel a claimant to initiate legal proceedings to recover amounts due under a policy when it offered amounts substantially less than the amounts ultimately recovered in the proceedings. *See* [WAC 284-30-330\(7\)](#).

No. 92267-5, *Perez-Crisantos* (appellant) *v. State Farm Fire & Casualty Co., et al.* (respondent). (Oral argument 10/5/16).

[Top](#)

Intoxicating Liquors—Negligence—Intoxication Defense—Proof of Intoxication—Admission—Sufficiency

Whether in a personal injury lawsuit where the defendant asserts the intoxication defense, under which it is a complete defense if the plaintiff was “under the influence of intoxicating liquor” and is found to have been more than 50 percent at fault, [RCW 5.40.060](#), the plaintiff’s admission to having been intoxicated at the time of the injury is conclusive evidence that the plaintiff was “under the influence” for purposes of the defense.

No. 92675-1, *Peralta* (petitioner) v. *State and Wash. State Patrol* (respondents, cross-petitioners). (Oral argument 11/15/16).

[191 Wn. App. 931 \(2015\)](#).

[Top](#)

Juveniles—Custody—Nonparent Petition—Hearing—Adequate Cause—What Constitutes—Parent Unable to Meet Special Needs of Child—Necessity

Whether grandparents seeking to establish “adequate cause” for a show cause hearing on their petition for nonparental custody of their minor grandchild had to demonstrate that the child had special needs that her parents could not meet. *See* [RCW 26.10.032\(2\)](#).

No. 92897-5, *Siufanua* (petitioners) v. *Fuga and Siufanua* (respondents). (Oral argument 10/25/16).

[Unpublished](#).

[Top](#)

Juveniles—Torts—Negligence—Injury to Child—Multiple At-Fault Entities—At-Fault Parent—Parental Immunity—Allocation of Fault to Immune Parent—Propriety

Whether, pursuant to [RCW 4.22.070](#), under which fault in a negligence action must be apportioned to every at-fault entity including entities immune from liability, the trial court in this action brought by plaintiffs who were injured as children properly allowed fault be apportioned to a parent who was immune from liability and reduced the award recoverable from the nonparent defendant by the percentage of the parent’s fault.

No. 93076-7, *Smelser and Smelser* (petitioners) *v.* *Paul and Smelser* (respondents).
(Oral argument 11/17/16).

[Unpublished.](#)

[Top](#)

Landlord and Tenant—Unlawful Detainer—Notice—Just Cause Termination—Compliance with Ordinance Language—Sufficiency—Existence of “Just Cause” for Termination of Tenancy—Trial—Necessity

Whether in this unlawful detainer proceeding under the Residential Landlord Tenant Act, chapter [59.12 RCW](#), tenants who were given notice to vacate their month-to-month rented premises were entitled to a trial on whether the landlords had “just cause” to terminate the tenancy under a Seattle ordinance requiring just cause for termination. *See* [SMC 22.206.160.C.1](#).

No. 92978-5, *Faciszewski & Klamon* (respondents) *v.* *Brown & Wahleithner* (petitioners). (Oral argument 11/8/16).

[192 Wn. App. 441 \(2016\).](#)

[Top](#)

Medical Treatment—Malpractice—Comparative Negligence—Contributory Fault—Failure to Follow Physician’s Advice and Instructions

Whether a medical provider’s claim that a patient was comparatively negligent in failing to follow his physician’s advice and instructions is a question for the jury, and should not have been dismissed on summary judgment, where the recommended actions allegedly would have led to the discovery of cancer though there was no diagnosis indicating the potential presence of cancer.

No. 91374-9, *David Dunnington and Janet Wilson* (petitioners) v. *Virginia Mason Medical Center* (respondent). (Oral argument 10/20/16). (*See also: Medical Treatment—Malpractice—Failure to Diagnose—Failure to Treat—Loss of Chance—Lost Chance of a Better Outcome—Causation—“But For” or “Substantial Factor” Causation*).

[Cross-motion for Discretionary Review](#)

[Top](#)

Medical Treatment—Malpractice—Failure to Diagnose—Failure to Treat—Loss of Chance—Lost Chance of a Better Outcome—Causation—“But For” or “Substantial Factor” Causation

Whether the “but for” or the “substantial factor” standard of causation applies to a claim for loss of chance of a better outcome in a medical malpractice action alleging a physician’s negligence delayed a diagnosis of cancer.

No. 91374-9, *David Dunnington and Janet Wilson* (petitioners) v. *Virginia Mason Medical Center* (respondent). (Oral argument 10/20/16). (*See also: Medical Treatment—Malpractice—Comparative Negligence—Contributory Fault—Failure to Follow Physician’s Advice and Instructions*).

[Motion for Discretionary Review](#)

[Top](#)

Mental Health—Involuntary Commitment—Sexually Violent Predators—Discharge or Release—Show Cause Hearing—Probable Cause—Change in Condition Since Last Commitment Trial or Less Restrictive Alternative Revocation Proceeding—Relevant Period

Whether in determining the existence of probable cause for a hearing on the unconditional release of a detainee committed as a sexually violent predator, the detainee’s progress in sexual deviancy treatment is measured from the date of the detainee’s original commitment trial or from the date of the detainee’s most recent proceeding revoking a less restrictive alternative.

No. 92501-1, *In re the Det. of Marcum* (petitioner). (Oral argument 10/5/16).

[190 Wn. App. 599 \(2015\)](#).

[Top](#)

Open Government—Public Disclosure—Public Agency—What Constitutes—Functional Equivalence Test—Woodland Park Zoological Society

Whether the Woodland Park Zoological Society, a nonprofit corporation that operates the Woodland Park Zoo on Seattle city-owned land, is the functional equivalent of a government agency, making it subject to the Public Records Act. *See* [RCW 42.56.010\(1\)](#).

No. 92846-1, *Fortgang* (petitioner) *v.* *Woodland Park Zoological Society* (respondent). (Oral argument 10/27/16).

[192 Wn. App. 418 \(2016\)](#).

[Top](#)

Personal Restraint—Criminal Law—Right to Public Trial—Jury Selection—Violation—Individual Questioning of Prospective Jurors—In Chambers—Invited Error—Defense Counsel’s Suggestion to Conduct In-Chambers Interviews—Ineffective Assistance of Counsel—On Appeal—Failure to Object to Closure of Trial

Whether in this criminal prosecution defense counsel’s suggestion that the trial court privately interview prospective jurors in chambers constituted invited error precluding the defendant from arguing on review that his right to a public trial was violated, and if not, whether appellate counsel was ineffective in failing to raise the public trial issue on direct appeal.

No. 91905-4, *In re Pers. Restraint of Salinas* (respondent). (Oral argument 10/11/16).

[Unpublished.](#)

[Top](#)

Personal Restraint—First Degree Murder—Creation of Grave Risk of Death—Trial—Instructions—Sufficiency—Elements—Knowledge and Disregard of Grave Risk of Death—Omission—Failure to Object—Claim of Ineffective Assistance of Trial and Appellate Counsel

Whether, in a trial for first degree murder by extreme indifference to life, the trial court erred in not instructing the jury that the State had to prove that the defendant had actual knowledge of and disregarded the grave risk of death to another person, and if so, whether defense counsel was ineffective in failing to object to the omission and appellate counsel was ineffective in failing to raise the issue on direct appeal.

No. 89585-6, *In re Pers. Restraint of Caldellis* (petitioner). (Oral argument 10/18/16).

(*See also:* [Personal Restraint—Trial—Misconduct of Prosecutor—Argument—Defendant’s Exercise of Right to Remain Silent—Right to Counsel—Effective Assistance of Counsel—Withdrawal of Objection—Failure to Raise Issue on Appeal](#); [Personal Restraint—Transfer to Superior Court—Reference Hearing—Basis—Supporting Evidence—Sufficiency—Claim of Sleeping Judge and Jurors](#)).

[Top](#)

Personal Restraint—Grounds—Exercise of Right to Trial—Sentence—Proportionality in Relation to Sentences for Accomplices Who Pleaded Guilty

Whether a sentence of 904 months for first degree murder by extreme indifference to human life amounted to a penalty for the defendant's exercise of his right to trial when the defendant's accomplices, who pleaded guilty, received lighter sentences.

No. 92412-1, *In the Matter of the Pers. Restraint of Sandoval* (petitioner). Oral argument 11/8/16. (See also: [Criminal Law—Conspiracy—Subject Crime—Murder by Extreme Indifference to Human Life—Validity](#), [Criminal Law—Parties to Offenses—Accomplices—What Constitutes—Murder by Extreme Indifference to Human Life—Actual Knowledge of Principal's Commission of Murder by Extreme Indifference—Necessity](#), [Personal Restraint—Trial—Misconduct of Prosecutor—Argument—Racial Composition of Gang—Prejudice](#), [Criminal Law—Evidence—Accomplice Testimony—Cautionary Instruction—Necessity](#), [Personal Restraint—Grounds—Ineffective Assistance of Counsel—On Appeal—Failure to File Reply Brief—Failure to Raise Issues—Failure to File Petition for Review in Supreme Court](#)).

Top

Personal Restraint—Grounds—Ineffective Assistance of Counsel—On Appeal—Failure to File Reply Brief—Failure to Raise Issues—Failure to File Petition for Review in Supreme Court

Whether in connection with convictions for conspiracy to commit first degree murder by extreme indifference to human life and for first degree murder by extreme difference to human life as an accomplice, appellate counsel was ineffective in not arguing that conspiracy to commit first degree murder by extreme indifference is not a valid crime, in not arguing that the defendant was entitled to lesser degree instructions on manslaughter, and in not filing a petition for review in the Supreme Court after the judgment and sentence was affirmed by the Court of Appeals.

No. 92412-1, *In the Matter of the Pers. Restraint of Sandoval* (petitioner). Oral argument 11/8/16 (*See also*: [Criminal Law—Conspiracy—Subject Crime—Murder by Extreme Indifference to Human Life—Validity](#), [Criminal Law—Parties to Offenses—Accomplices—What Constitutes—Murder by Extreme Indifference to Human Life—Actual Knowledge of Principal’s Commission of Murder by Extreme Indifference—Necessity](#), [Personal Restraint—Trial—Misconduct of Prosecutor—Argument—Racial Composition of Gang—Prejudice](#), [Criminal Law—Evidence—Accomplice Testimony—Cautionary Instruction—Necessity](#), [Personal Restraint—Grounds—Exercise of Right to Trial—Sentence—Proportionality in Relation to Sentences for Accomplices Who Pleaded Guilty](#)).

[Top](#)

Personal Restraint—Petition—Timeliness—Statutory Limits—Exceptions—Significant Change in Law—Appellate Decision—*Blazina* Holding—Imposition of Legal Financial Obligations—Boilerplate Finding of Ability to Pay

Whether *State v. Blazina*, 182 Wn.2d 827, 344 P.3d 680 (2015), is a significant change in the law under [RCW 10.73.100\(6\)](#) that exempts a challenge to discretionary legal financial obligations from the one-year time limit for filing a personal restraint petition, or whether the time limit does not apply under [RCW 10.73.090\(1\)](#) because the boilerplate finding of ability to pay renders the judgment and sentence invalid on its face.

No. 92616-6, *In re Pers. Restraint of Flippo* (petitioner). (Oral argument 10/27/16).

[191 Wn. App. 405 \(2015\)](#).

[Top](#)

Personal Restraint—Transfer to Superior Court—Reference Hearing—Basis—Supporting Evidence—Sufficiency—Claim of Sleeping Judge and Jurors

Whether a personal restraint petitioner challenging his conviction for first degree murder by extreme indifference to life presented sufficient evidence to justify a reference hearing in superior court to determine whether jurors and the trial judge slept during the petitioner's trial.

No. 89585-6, *In re Pers. Restraint of Caldellis* (petitioner). (Oral argument 10/18/16). (See also: [Personal Restraint—First Degree Murder—Creation of Grave Risk of Death—Trial—Instructions—Sufficiency—Elements—Knowledge and Disregard of Grave Risk of Death—Omission—Failure to Object—Claim of Ineffective Assistance of Trial and Appellate Counsel](#); [Personal Restraint—Trial—Misconduct of Prosecutor—Argument—Defendant's Exercise of Right to Remain Silent—Right to Counsel—Effective Assistance of Counsel—Withdrawal of Objection—Failure to Raise Issue on Appeal](#)).

[Top](#)

Personal Restraint—Trial—Misconduct of Prosecutor—Argument—Defendant's Exercise of Right to Remain Silent—Right to Counsel—Effective Assistance of Counsel—Withdrawal of Objection—Failure to Raise Issue on Appeal

Whether the prosecutor in a trial for first degree murder by extreme indifference committed misconduct in posing a rhetorical question in rebuttal closing argument about the reasons a defendant might exercise his right to remain silent in addition to the reasons posed in defendant's closing argument, and if so, whether trial counsel was ineffective in withdrawing an objection to the comment and whether appellate counsel was ineffective in failing to raise the issue on direct appeal.

No. 89585-6, *In re Pers. Restraint of Caldellis* (petitioner). (Oral argument 10/18/16). (See also: [Personal Restraint—First Degree Murder—Creation of Grave Risk of Death—Trial—Instructions—Sufficiency—Elements—Knowledge and Disregard of Grave Risk of Death—Omission—Failure to Object—Claim of Ineffective Assistance of Trial and Appellate Counsel](#); [Personal Restraint—Transfer to Superior Court—Reference Hearing—Basis—Supporting Evidence—Sufficiency—Claim of Sleeping Judge and Jurors](#)).

[Top](#)

Personal Restraint—Trial—Misconduct of Prosecutor—Argument—Racial Composition of Gang—Prejudice

Whether in this prosecution for murder, in which a gang member was alleged to be liable as an accomplice, the prosecutor committed prejudicial misconduct by commenting in closing argument on the racial composition of the gang membership in relation to the defendant's position in the internal hierarchy of the gang.

No. 92412-1, *In the Matter of the Pers. Restraint of Sandoval* (petitioner). (Oral argument 11/8/16). (See also: [Criminal Law—Conspiracy—Subject Crime—Murder by Extreme Indifference to Human Life—Validity](#), [Criminal Law—Parties to Offenses—Accomplices—What Constitutes—Murder by Extreme Indifference to Human Life—Actual Knowledge of Principal's Commission of Murder by Extreme Indifference—Necessity](#), [Criminal Law—Evidence—Accomplice Testimony—Cautionary Instruction—Necessity](#), [Personal Restraint—Grounds—Ineffective Assistance of Counsel—On Appeal—Failure to File Reply Brief—Failure to Raise Issues—Failure to File Petition for Review in Supreme Court](#), [Personal Restraint—Grounds—Exercise of Right to Trial—Sentence—Proportionality in Relation to Sentences for Accomplices Who Pleaded Guilty](#)).

[Top](#)

Venue—Actions for Injury to Property—Location of Property—Action Against State—Action Against Corporate Defendant—Corporate Residence—Challenge to Venue—Waiver

Whether in consolidated lawsuits against the State and corporate defendants whose forestry activities allegedly caused damage to properties in Lewis County, venue in Lewis County is mandatory and unwaivable under [RCW 4.12.010\(1\)](#), which requires actions for injuries to real property to be brought in the county in which the subject of the action is located, such that the King County Superior Court, where the lawsuits were filed, properly transferred venue to Lewis County.

No. 91711-6, *Ralph* (petitioner) v. *Weyerhaeuser Co., et al.* (respondents). (Oral argument 9/8/16).

[Top](#)
