

Supreme Court Issues
Cases Not Yet Set & September Term 2020
September 16, 2020

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Cases Not Yet Set

Courts—Supreme Court—Jurisdiction—Original Jurisdiction—Extraordinary Writs—State Officers—What Constitutes—Municipal Court Judges—Authority of Presiding Judge—Transfer and Consolidation of Criminal Cases

Whether the presiding judge of a municipal court is a “state officer” over whom the Washington Supreme Court has original jurisdiction for purposes of a petition for a writ of prohibition or mandamus under Washington Constitution Article IV, §4, and if so, whether a presiding judge of the municipal court has authority to transfer and consolidate multiple district court criminal cases concerning the same defendant into one municipal department before a single judge.

No. 98319-4, *Ladenburg* (petitioner) v. *Henke* (respondent).

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Criminal—Misdemeanor—Complaint—Citizen Affidavit—Statute of Limitations **Complaint—Initiation—**

Whether the filing of an affidavit in support of a citizen’s misdemeanor complaint under CrRLJ 2.1(c) is sufficient to initiate a criminal action for purposes of the statute of limitations.

No. 98613-4, *In re Citizen Complaint by: Stout* (petitioner) v. *Felix* (respondent).

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Criminal Law—Burglary—Trafficking in Stolen Property—Evidence—Prior Acts—Interview Related to Prior Burglary—Admissibility

Whether in this prosecution for burglary and trafficking in stolen property, the trial court properly admitted as evidence of knowledge a videotaped interview from a prior investigation in which the defendant discussed committing previous burglaries.

No. 98591-0, *State* (petitioner) *v.* *Denham* (respondent). (See also: [Criminal Law—Evidence—Search and Seizure—Search Warrant for Cell Phone Records—Validity—Probable Cause—Nexus to Charged Offenses](#)).

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Criminal Law—Evidence—Search and Seizure—Search Warrant for Cell Phone Records—Validity—Probable Cause—Nexus to Charged Offenses

Whether in this prosecution for second degree burglary and trafficking in stolen property, the affidavit in support of a warrant to search the defendant's cell phone records was insufficient in failing to establish a nexus between the records and the charged offenses.

No. 98591-0, *State* (petitioner) *v.* *Denham* (respondent). (See also: [Criminal Law—Burglary—Trafficking in Stolen Property—Evidence—Prior Acts—Interview Related to Prior Burglary—Admissibility](#)).

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***Juveniles—Parental Relationship—Dependency—Supporting Findings—Findings From Termination Proceeding Involving Parent’s Other Children—Collateral Estoppel**

Whether under collateral estoppel principles, the trial court in finding a child a “dependent child” for purposes of RCW 13.34.030(6)(c), properly applied findings of fact from a prior termination proceeding involving different children of the same parent.

No. 98825-1, *In re the Dependency of B.S.*

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Juveniles—Parental Relationship—Termination—Adoption—Degree of Proof—Clear, Cogent, and Convincing Evidence—What Constitutes—Parental Unfitness—Findings—Sufficiency

Whether in proceedings involving a petition by a potential adoptive parent to terminate a biological father’s parental rights to a child, the trial court relied on improper factors and lacked clear, cogent, and convincing evidence that the father failed to perform parental duties in a manner that showed a substantial lack of regard for his parental obligations.

No. 97390-3, *In re the Adoption of K.M.T.*

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Mandamus—Availability—Governor—Department of Corrections—Emergency Powers—Pandemic Response—Prisons—Health and Safety of Offenders Susceptible to Pandemic—Release of At Risk Population

Whether this court by writ of mandamus may order the Governor or Secretary of the Department of Corrections to adopt early release procedures for certain at risk offenders in state prisons or county jails to protect the health and safety of such offenders during an emergency pandemic crisis.

No. 98317-3, *Colvin, et al. (petitioners) v. Jay Inslee, et al. (respondents).*

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Negligence—Res Ipsa Loquitur—Elements—Presence of Negligence—Proof—Result Not be Expected Without Negligence—Injury or Injury-Causing Act or Occurrence as Relevant “Result.”

Whether in a negligence action seeking to establish breach of a duty of care in a roller coaster accident on the basis of res ipsa loquitur, proof that the “result” is one that would not be expected in the absence of negligence must consist of proof that the injury-causing act or occurrence is a result not expected or may also consist of proof that the injury suffered would not be expected without negligence.

No. 97503-5, *Brugh (respondent) v. Fun-Tastic Rides Co., et al. (petitioners)*.

[8 Wn. App. 2d 176 \(2019\)](#).

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Personal Injury—Premises Liability—Dog Bite—Landlord Liability to Tenant’s Guest

Whether, in this lawsuit for personal injury inflicted when a dog belonging to a residential tenant bit a guest, the tenant’s landlord may be liable under a premises liability theory.

No. 98221-0, *Blanco (petitioner) v. Sandoval (respondent)*.

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Trial—Due Process—Fair Trial—Implicit Bias—Motion for New Trial—Evidentiary Hearing—Necessity

Whether in this personal injury action, the trial court should have held an evidentiary hearing after the plaintiff, who is African American, moved for a new trial claiming that defense counsel, the court, and the jury displayed implicit racial bias.

No. 97672-4, *Henderson (petitioner) v. Thompson (respondent)*.

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**Witnesses—Journalistic Privilege—Subpoena—Criminal Investigation—
Unpublished Photographs and Video Recordings—In-Camera Review—
Applicability of Privilege**

Whether under [RCW 5.68.010\(2\)](#), common law, and constitutional principles, news media companies may not be compelled by subpoena duces tecum to produce unpublished video and still images taken by their photographers and videographers for in-camera review in connection with a Seattle Police Department investigation of destruction of law enforcement vehicles and theft of police firearms during a public disturbance.

No. 98879-0, *In re Seattle Pole Dep't Subpoena Duces Tecum*.

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Attorney and Party Misconduct—Asking About Excluded Evidence—Criticizing Defendant’s Choice of Witness—Prompting Improper Testimony—Failure to Disclose Evidence Undermining Plaintiffs’ Claims

Whether in this wrongful death lawsuit, the jury’s finding that the defendant was liable should be reversed on the basis of misconduct by the plaintiffs’ attorney at trial or on the basis of the failure of two plaintiffs to disclose evidence that might have undermined their claims for loss of consortium and other noneconomic damages.

No. 98296-1, *Coogan, et al. (plaintiffs) v. Genuine Auto Parts Co., et al. (respondents)*. (Oral argument 11/10/20). (See also: [Product Liability—Asbestos-Related Disease—Damages—Excessiveness—Pain and Suffering Award—Shock to Conscience—Excessiveness of Other Damages](#); [Product Liability—Asbestos-Related Disease—Evidence—Expert Testimony—Testimony as to Decedent’s Preexisting Alcohol-Related Condition—Exclusion—Unfair Prejudice](#)).

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Controlled Substances—Punishment—Uniform Controlled Substance Act—Mandatory Sentence—Sentencing Reform Act—Exception—“Another Term of Confinement.”

In this prosecution for sale of heroin for profit, [RCW 69.50.410\(1\)](#), whether [RCW 69.50.410\(3\)\(a\)](#), which provides that a person convicted of violating subsection (1) by selling heroin “shall receive a mandatory sentence of two years in a correctional facility of the department of social and health services,” sets forth “another term of confinement” within the meaning of [RCW 9.94A.505\(2\)\(a\)\(i\)](#), thus operating as an exception to sentencing grids established by the Sentencing Reform Act.

No. 98201-5, *State (petitioner) v. Peterson (respondent)*. (Oral argument 10/22/20).

[12 Wn. App. 2D 195 \(2020\)](#).

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Criminal Law—Crimes—Degrees of Crime—Inferior Degree—Instruction—Necessity—Factual Sufficiency—Inference of Lesser Offense Only—Validity

Whether in a prosecution for second degree assault the defendant was required to present affirmative evidence that only fourth degree assault was committed “to the exclusion” of the charged offense in order to obtain a jury instruction on the lesser offense.

No. 98256-2, *State (respondent) v. Coryell (petitioner)*. (Oral argument 11/10/20).

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Criminal Law—Evidence—Post-Crime Confidential Informant Agreement Between Police and Alleged Victim—Evidence of Details of Agreement—Admissibility

Whether in this prosecution for attempted first degree murder, the trial court erroneously precluded the defendant from cross-examining the alleged victim about the details of a confidential informant agreement between the alleged victim and police entered into after the commission of the crime.

No. 98056-0, *State (respondent) v. Orn (petitioner)*. (Oral argument 9/24/20). (*See also*: [Homicide—Attempted Murder—Attempted First Degree Murder—To-Convict Instruction—Sufficiency—Elements—“Premeditation.”](#)).

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Criminal Law—Homicide—Aggravated First Degree Murder—Punishment—Juvenile Offender—Resentencing—Effective Life Sentence—Validity

Whether under the Supreme Court’s decision in *Miller v. Alabama*, 567 U.S. 460, 469-70, 132 S. Ct. 2455, 183 L. Ed. 2d 407 (2012), a 46-year minimum sentence for aggravated murder committed by a 17-year-old offender constitutes an unlawful de facto life sentence, and whether the trial court abused its discretion in resentencing the offender under the *Miller*-fix statute, [RCW 10.95.030](#).

97766-6, *State (respondent) v. Haag (petitioner)*. (Oral argument 10/20/20).

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Criminal Law—Motion to Vacate Judgment and Sentence—Order for New Sentencing Hearing—Appealability by State

Whether the State has the right to appeal from a trial court order granting a new sentencing hearing pursuant to a motion under [CrR 7.8](#).

No. 98326-7, *State (petitioner) v. Waller (respondent)*. (Oral argument 10/27/20).

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***Criminal Law—Punishment—Sentence—Conditions—Community Custody—Restriction on Internet Use—Validity—Vagueness—Overbreadth**

Whether in this criminal prosecution for attempted second degree rape of a child, attempted commercial sexual abuse of a minor, and communication with a minor for immoral purposes, a community custody condition that directs the defendant to “not use or access the World Wide Web unless specifically authorized by [his community corrections officer] through approved filters” is unconstitutionally vague or overbroad.

No. 98493-0, *State (respondent) v. Johnson (petitioner)*. (Oral argument 11/17/20).

[12 Wn. App. 2d 201 \(2020\)](#).

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Criminal Law—Punishment—Sentence—Juvenile Offenders—*Miller v. Alabama—Miller Fix—Indeterminate Sentence Review Board—Petition for Early Release—Factors—Improper Denial of Release—Remedy*

Whether in this offender’s petition for early release pursuant to [RCW 9.94A.730](#) for crimes committed as a juvenile, the Indeterminate Sentence Review Board, in denying release, considered improper factors, and if so, whether the proper remedy is to remand to the board for reconsideration under appropriate evaluation factors or remand with directions to release the offender after establishing release conditions.

No. 97973-1, *In re Pers. Restraint of Betancourt; Betancourt* (petitioner) v. *Indeterminate Sentence Review Bd.* (respondent). (Oral argument 10/27/20).

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***Criminal Law—Punishment—Sentence—Persistent Offender Life Sentence—Prior Most Serious Offense—Second Degree Robbery—Removal from List of Most Serious Offenses—Effect**

Whether a defendant sentenced to life imprisonment as a persistent offender based in part on a prior conviction for second degree robbery is entitled to relief from his life sentence on the basis that the legislature removed second degree robbery from the statutory list of “most serious offenses” while the defendant’s appeal was pending.

No. 98496-4, *State* (respondent) v. *Jenks* (petitioner). (Oral argument: 11/17/20).

[12 Wn. App. 2d 588 \(2020\)](#).

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Criminal Law—Rape—Force or Coercion—Defense of Consent—State’s Burden of Proof—Jury Instruction—Necessity

Whether in this prosecution for second degree rape by forcible compulsion in which the defendant asserted the defense of consent, the State bore the burden to prove the absence of consent, and if so, whether the jury should have been so instructed.

No. 98067-5, *State (respondent) v. Knapp (petitioner)*. (Oral argument 9/24/20).

[11 Wn. App. 2d 375 \(2019\)](#).

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Criminal Law—Sexual Offenses—Punishment—Special Sex Offender Sentencing Alternative—Eligibility—Defendant’s Established Relationship With or Connection to Victim—What Constitutes

Whether in this prosecution for first degree child molestation, the defendant had a sufficient connection to the victim to make him eligible for the special sex offender sentencing alternative pursuant to [RCW 9.94A.670\(2\)\(a\)](#), under which an offender is eligible only if the offender had a sufficient relationship with or connection to the victim such that the crime itself did not constitute the sole connection.

No. 98066-7, *State (respondent) v. Pratt (petitioner)*. (Oral argument 10/20/20).

[11 Wn. App. 2d 450 \(2019\)](#).

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Homicide—Attempted Murder—Attempted First Degree Murder—To-Convict Instruction—Sufficiency—Elements—“Premeditation.”

Whether in this prosecution for attempted first degree murder, the “premeditation” element of the completed crime of first degree murder should have been included in the to-convict instruction.

No. 98056-0, *State (respondent) v. Orn (petitioner)*. (Oral argument 9/24/20). (*See also: Criminal Law—Evidence—Post-Crime Confidential Informant Agreement Between Police and Alleged Victim—Evidence of Details of Agreement—Admissibility*).

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Indians—Infants—Dependency—“Active Efforts” Requirement—Compliance—Invited Error

Whether in this dependency action, the Court of Appeals erroneously applied the invited error doctrine to decline to review the mother’s argument that the Department of Children, Youth, and Families failed to comply with the “active efforts” requirement of the federal and state Indian Child Welfare Acts, and if so, whether the department failed to make active efforts to provide services and programs to the mother to prevent the breakup of her family.

No. 98487-5, *In re the Dependency of A.K., L.R.K.S., & D.B.K.S.* (Oral argument 10/29/20)

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Juveniles—Juvenile Justice—Disposition—Manifest Injustice Disposition—Aggravating Factors—Nonstatutory Factors

Whether the trial court in this juvenile criminal adjudication erroneously relied on nonstatutory aggravating factors in imposing a manifest injustice disposition, including the juvenile's need for substance abuse and mental health treatment.

No. 96894-2, *State* (respondent) v. *M.S.* (petitioner). (Oral argument 9/22/20).

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Juveniles—Juvenile Justice—Plea of Guilty—Disposition—Manifest Injustice Disposition—Due Process—Aggravating Factors—Preplea Notice—Necessity

Whether due process principles require that a juvenile charged with a crime in juvenile court receive notice before the entry of a guilty plea of the aggravating factors that may be relied upon to support a manifest injustice disposition.

No. 96143-3, *State* (respondent) v. *D.L.* (petitioner). (Oral argument 9/22/20).

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Limitation on Actions—Pension Contract—Challenge to Statute Affecting Contract—Commencement of Limitation Period

Whether the statute of limitations in this action by public employees challenging a 2001 amendment to the statutes governing a public employee pension program commenced on the date of the statutory amendment or on the date each program member retired.

No. 98495-6, *Hester, et al.* (petitioners) v. *State, et al.* (respondents). (Oral argument 10/29/20). (See also: [Pensions—Public Employees—Washington State Patrol Retirement System—Benefits—Calculation—Salary—Statutory Amendment—Elimination of Voluntary Overtime from Salary—Validity—Impairment of Contract](#)).

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Limitations of Actions—Residential Landlord-Tenant Act—Action for Return of Damage Deposit—Statute of Limitations for Recovery of Personal Property—Applicability

Whether a former residential tenant’s lawsuit alleging his landlord failed to provide a timely final statement of reasons for failing to return his damage deposit was subject to the two-year “catchall” statute of limitations under RCW 4.16.130 or the three-year statute of limitations under RCW 4.16.080(2) for actions to recover personal property.

No. 98024-1, *Silver (petitioner) v. Rudeen Mgmt. Co., Inc. (respondent)*. (Oral argument 10/20/20).

[10 Wn. App. 2d 676, 449 P.3d 1067 \(2019\)](#).

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Negligence—Wrongful Death—Student—Action Against School District—Duty and Standard of Care—Proximate Cause—Legal Causation—Factual Causation—Possibility of Multiple Causes

Whether in this negligence action against a school district stemming from the death of a student struck by a vehicle during a school activity off school grounds, the actions of a school staff member constituted a legal and a factual cause of the student’s death.

No. 98280-5, *Meyers (respondent) v. Ferndale School Dist. (petitioner)*. (Oral argument 10/22/20).

[12 Wn. App. 2d 254 \(2020\)](#).

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Open Government—Public Disclosure—Public Records—Exemptions—Public Agency Personnel Files—Photographs and Birthdates of Criminal Justice Agency Employees—News Media—YouTube Channel—Applicability

Whether in this action seeking access to law enforcement agency personnel records under the Public Records Act, a YouTube channel that concerns claims of government corruption qualifies as “news media” for purposes of [RCW 5.68.010\(5\)](#), entitling it to employee photographs and birthdates under [RCW 42.56.250\(8\)](#).

No. 98768-8, *Green* (respondent) *v.* *Pierce County* (petitioner). (Oral argument 10/29/20).

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Pensions—Public Employees—Washington State Patrol Retirement System—Benefits—Calculation—Salary—Statutory Amendment—Elimination of Voluntary Overtime from Salary—Validity—Impairment of Contract

Whether a 2001 statutory amendment to the Washington State Patrol Retirement System unconstitutionally impaired pension contracts in violation of article I, section 10 of the United States Constitution and article I, section 23 of the Washington Constitution by eliminating voluntary overtime from “salary” for purposes of determining the benefit amount.

No. 98495-6, *Hester, et al.* (petitioners) *v.* *State, et al.* (respondents). (Oral argument 10/29/20). (*See also:* [Limitation on Actions—Pension Contract—Challenge to Statute Affecting Contract—Commencement of Limitation Period](#)).

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Personal Restraint—Petition—Punishment—Juvenile Offender—Pre-Sentencing Reform Act Indeterminate Sentence—Parole—“Miller-fix” statute—Applicability

Whether the United States Supreme Court’s decision in *Miller v. Alabama*, 567 U.S. 460, 469-70, 132 S. Ct. 2455, 183 L. Ed. 2d 407 (2012), or the “Miller-fix” statute, [RCW 9.94A.730\(1\)](#), authorizes the Indeterminate Sentencing Review Board to consider for parole under the *Miller*-fix statute an offender sentenced under the former indeterminate sentencing statutes to multiple consecutive indeterminate terms for crimes committed when he was a juvenile.

No. 97689-9, *In re Pers. Restraint of Brooks* (petitioner). (Oral argument 11/10/20).

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Personal Restraint—Petition—Timeliness—Significant Change in Law—Tsai Decision

Whether this court’s decision in *In re Personal Restraint of Yung-Chen Tsai*, [183 Wn.2d 91, 351 P.3d 138 \(2015\)](#), constituted a retroactive change in the law as to the interpretation of [RCW 10.40.200](#), exempting from the one-year time limit on collateral relief a personal restraint petition seeking to withdraw a guilty plea under that statute on the basis of misinformation as to immigration consequences.

No. 98026-8, *In re Pers. Restraint of Garcia-Mendoza* (petitioner). (Oral argument 10/27/20).

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Product Liability—Asbestos-Related Disease—Damages—Excessiveness—Pain and Suffering Award—Shock to Conscience—Excessiveness of Other Damages

Whether in this wrongful death product liability lawsuit, the Court of Appeals erred in reversing the decedent’s estate’s \$30 million pain and suffering jury award on the basis that it was so excessive that it shocked the court’s conscience, and whether the other portions of the judgment were excessive.

No. 98296-1, *Coogan, et al. (petitioners) v. Genuine Auto Parts Co., et al. (respondents)*. (Oral argument 11/10/20). (*See also: Product Liability—Asbestos-Related Disease—Evidence—Expert Testimony—Testimony as to Decedent’s Preexisting Alcohol-Related Condition—Exclusion—Unfair Prejudice; Attorney and Party Misconduct—Asking About Excluded Evidence—Criticizing Defendant’s Choice of Witness—Prompting Improper Testimony—Failure to Disclose Evidence Undermining Plaintiffs’ Claims*).

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Product Liability—Asbestos-Related Disease—Evidence—Expert Testimony—Testimony as to Decedent’s Preexisting Alcohol-Related Condition—Exclusion—Unfair Prejudice

Whether in this wrongful death lawsuit based on the decedent’s asbestos-related disease, the trial court erred in excluding a defense expert’s testimony regarding the decedent’s preexisting alcohol-related condition.

No. 98296-1, *Coogan, et al. (petitioners) v. Genuine Auto Parts Co., et al. (respondents)*. (Oral argument 11/10/20). (*See also: Product Liability—Asbestos-Related Disease—Damages—Excessiveness—Pain and Suffering Award—Shock to Conscience—Excessiveness of Other Damages; Attorney and Party Misconduct—Asking About Excluded Evidence—Criticizing Defendant’s Choice of Witness—Prompting Improper Testimony—Failure to Disclose Evidence Undermining Plaintiffs’ Claims*).

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Public Assistance—Medical Care—Medicaid—Benefits—Determination—State Rules—“Shared Benefit” Rule—“Informal Support” Rule—Validity

Whether “shared benefit” and “informal support” regulations employed by the available to pay in-home long-term personal care workers violate state and federal wage laws and were enacted in excess of statutory authority and arbitrarily and capriciously.

No. 97216-8, *SEIU 775* (petitioner) *v. State, et al.* (respondents). (Oral argument 9/24/20).

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Sexual Offenses—Victim Testimony—Corroboration—Instruction—Validity

Whether in a prosecution for a sex offense, an instruction to the jury that it is not necessary that the alleged victim’s testimony be corroborated in order to convict the defendant constitutes an impermissible comment on the evidence in violation of article IV, section 16 of the Washington Constitution.

No. 96034-8, *State* (respondent) *v. Svaieson* (petitioner). (Stricken).

[Supplemental Petition for Review.](#)

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Torts—Interference with Corpse—Standing—Next of Kin—Statutory Definition—Necessity

Whether, in this action for tortious interference with a corpse, only those individuals identified as “next of kin” as defined by [RCW 68.50.160](#) at the time of a decedent’s death have standing to bring a claim.

No. 98514-6, *Fox* (plaintiff) *v. City of Bellingham* (defendant). (Oral argument 11/17/20).

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Writ of Prohibition—Ex Parte Superior Court Proceeding—Setting of Bail at Contested District Court Hearing—Subsequent Increase in Bail at Ex Parte Proceeding—Validity

Whether in this criminal prosecution in which bail was originally set at a contested hearing at first appearance and the defendant thereafter did not violate the conditions of his release, the superior court improperly increased bail in a subsequent ex parte proceeding at the request of the prosecuting attorney, and if so, whether this court should issue a writ of prohibition prohibiting increasing bail in ex parte proceedings.

No. 98154-0, *Pimental* (petitioner) v. *The Judges of King County Superior Court, et al.* (respondents). (Oral argument 11/17/20). (See also: [Writ of Prohibition—Jurisdiction of Supreme Court—State Officer—King County Prosecuting Attorney](#)).

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Writ of Prohibition—Jurisdiction of Supreme Court—State Officer—King County Prosecuting Attorney

Whether the King County Prosecuting Attorney is a state officer for purposes of an original action for a writ of prohibition filed in the Washington Supreme Court pursuant to article IV, section 4, of the Washington State Constitution, thus permitting the exercise of jurisdiction over the prosecuting attorney.

No. 98154-0, *Pimental* (petitioner) v. *The Judges of King County Superior Court, et al.* (respondents). (Oral argument 11/17/20). (See also: [Writ of Prohibition—Ex Parte Superior Court Proceeding—Setting of Bail at Contested District Court Hearing—Subsequent Increase in Bail at Ex Parte Proceeding—Validity](#)).

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