

Supreme Court Issues  
Cases Not Yet Set & January Term 2016  
November 25, 2015

- \*Agriculture—Farm Labor Contractors—License—Necessity—Agent—Liability for Agent’s Failure to Obtain License—Knowing Use of Unlicensed Contractor—Failure to Verify Whether Contractor Licensed.
- \*Animals—Dogs—Liability for Attack—Statutory Provisions—Strict Liability—Exception—Lawful Application of Police Dog—Bite Against Police Officer.
- \*Attorney and Client—Malpractice—Criminal Defense Lawyer—Elements—Innocence of Underlying Crime—Exception—Uncorrected Sentencing Error.
- \*Condominiums—Declaration—Amendment—Statutory Provisions—Voting Percentage—Ninety Percent Requirement—Change in Uses to Which Units Are Restricted—“Uses”—Scope—Leasing.
- \*Constitutional Law—Freedom of Speech—Begging—Time, Place, and Manner Restriction—Place Restriction—Highway On and Off Ramps—Traditional Public Forum—Content Neutrality.
- Counties—Joint Self-Insurance Agreement—Assignments—After Loss—Prohibition.
- Criminal Law—Confessions—Admission as Evidence—Voluntariness of Confession—Denial of Access to Counsel—Delay in Preliminary Appearance.
- \*Criminal Law—Confessions—Voluntariness—Information Required by Jail Authorities as a Condition for Receiving Safe Housing—Gang Affiliation Documentation—Right of Confrontation—Harmless Error.
- \*Criminal Law—Domestic Violence—Evidence—Other Offenses or Acts—Prior Acts of Domestic Violence—Lack of Victim Recantation—Admissibility.
- \*Criminal Law—Evidence—Hearsay—Right of Confrontation—Statement of Nontestifying Codefendant—Redaction—Sufficiency—Name Replaced With “The First Guy.”
- \*Criminal Law—Hearsay—Prior Inconsistent Statement—Other Proceeding—Statement Given to Police.
- \*Criminal Law—Homicide—Felony Murder—Robbery as Predicate Felony—Accomplice—Affirmative Defense—Lack of Knowledge Codefendants Were Armed and Planned a Robbery—Jury Instruction—Necessity—Evidence in Support.
- \*Criminal Law—Punishment—Death Penalty—Eligibility—Arbitrary and Capricious Application.
- 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—Reversal on Appeal—New Special Sentencing Proceeding—Statutory Authority—Discretion of Prosecutor—Validity—Cruel and Unusual Punishment—Due Process.

- Criminal Law—Punishment—Death Penalty—Review—Evidence—Sufficiency—Passion or Prejudice—Proportionality.
- \*Criminal Law—Punishment—Death Penalty—Review—Proportionality—Cruel Punishment—State Constitution—Absence of Violent Criminal Record—Only One Victim.
- \*Criminal Law—Punishment—Death Penalty—Review—Proportionality—Finding by State Supreme Court—Right to Jury Trial.
- \*Criminal Law—Punishment—Death Penalty—Special Sentencing Procedure—Evidence—Circumstances of Crime—Defendant Serving Life Sentence.
- \*Criminal Law—Punishment—Death Penalty—Special Sentencing Procedure—Evidence—Statutory Provisions—“Facts and Circumstances of Murder”—Vagueness.
- \*Criminal Law—Punishment—Death Penalty—Special Sentencing Procedure—Jury—Selection—Disqualification—Misunderstanding of Burden of Proof.
- 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—Special Sentencing Procedure—Prosecutor’s Conduct—Misconduct—Argument—“Declare the Truth”—Value of Mitigation Evidence—Comparison With Victim’s Rights—Characterization of Severity of the Crime—Comment on Defendant’s Demeanor.
- Criminal Law—Punishment—Death Penalty—Trial—Jury—Deliberations—Instructions—Validity—Standard of Proof—Premeditation.
- \*Criminal Law—Punishment—Sentence—Outside Standard Range—Aggravating Circumstances—Gang Activity—Proof—Generalized Gang Evidence—Admissibility—Harmless Error.
- \*Criminal Law—Review—Costs—Substantially Prevailing Party—Withdrawal of Counsel After Filing *Anders* Brief.
- \*Criminal Law—Searches and Seizures—Warrantless Search—Validity—Abandoned Property—Flight from Stolen Vehicle—Pursuit of Fleeing Suspect—Search of Cellular Telephone.
- \*Criminal Law—Trial—Misconduct of Prosecutor—Argument—Witnesses—Failure to Call—Available Corroborative Witness.

- \*Deeds of Trust—Defaulting Borrower—Lender Entry into Premises Prior to Foreclosure and Trustee’s Sale—Predefault Agreement Permitting Entry—Validity—Receivership Statute—Exclusivity of Preforeclosure Remedy.
- \*Eminent Domain—Compensation—Litigation Costs—30-Day Settlement Offer—Modification of Scope of Condemnation at Trial—Effect.
- \*Eminent Domain—Compensation—Proof—Hearsay—Admission of Party Opponent—Out-of-Court Expert Valuation.
- \*Employment—Compensation—Damages for Nonpayment of Wages—Attorney Fees—Statutory Provisions—“Action”—What Constitutes—Administrative Appeal of Disciplinary Action.
- \*Industrial Insurance—Assessments—Premiums—Eligibility—Workers—Worker or Independent Contractor—Franchisee.
- \*Insurance—Property Damage—Water Damage—Exclusions—Suspension of Coverage During Vacancy of Building—Effective Date of Suspension.
- \*Judgment—Collateral Estoppel—Applicability—Appellate Decision—Subsequent Retroactive Legislative Amendment—Pending Tax Refund Claim.
- \*Juveniles—Juvenile Justice—Disposition—Conditions—Letter of Apology—Validity—First Amendment.
- 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—Hearing—Probable Cause Hearing—Timeliness—Continuance—End of Period—Excluded Days.
- \*Mental Health—Involuntary Commitment—Probable Cause Hearing—Privacy—Use of Initials in Place of Full Name.
- \*Mental Health—Involuntary Commitment—Probable Cause Hearing—Timeliness—Continuance—End of Period—Excluded Days
- \*Negligence—Duty—Protection of Others—Special Relationship—Actor and Third Person—Criminal Acts of Third Person—“Taking Charge” of Third Person—Scope of Duty—Jail Inmate—Mental Health Issues—Failure to Examine and Treat.
- \*Personal Restraint—Petition—Timeliness—Statutory Limits—Exceptions—Significant Change in Law—Appellate Decision—Retroactivity—*W.R. Case*.
- \*Property—Title—Recording of Liens—Negligence—Duties—Scope— Third Parties.
- \*Schools—Students—Supervision—Duty—Reasonably Foreseeable Dangers—Student With History of Sexually Assaultive Behavior—Registered Sex Offender.
- Statutes—Construction— Counties—Joint Self-Insurance Agreement—Contracts—Insurance—Liability Policy—Duty to Defend.
- Taxation—Business & Occupation Tax—Exemptions—Direct Seller’s Representative—Statutes—Amendment—Retroactivity—Validity—Due Process.

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## Cases Not Yet Set

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### **Counties—Joint Self-Insurance Agreement—Assignments—After Loss—Prohibition**

Whether a county and its employee were precluded from assigning any claims they might have against a county risk pool self-insurance program (formed under chapters [48.62](#) and [39.34 RCW](#)) and its commercial insurers, where the risk pool’s joint self-insurance liability policy and interlocal agreement contained nonassignment provisions and the commercial insurers issued “following form” policies.

No. 91154-1, *Wash. Counties Risk Pool, et al.* (respondents) v. *Clark County, Wash., et al.* (petitioners). (See also: [Statutes—Construction—Counties—Joint Self-Insurance Agreement—Contracts—Insurance—Liability Policy—Duty to Defend](#)).

[Top](#)

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## **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). (*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](#)

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## **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). (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). (*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

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**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). (*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). (*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). (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). (*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). (*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](#).)

**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). (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). (*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.](#))

## **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). ([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](#)

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## **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). ([See also: Medical Treatment—Malpractice—Comparative Negligence—Contributory Fault— Failure to Follow Physician’s Advice and Instructions](#)).

[Motion for Discretionary Review](#)

[Top](#)

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**\*Personal Restraint—Petition—Timeliness—Statutory Limits—Exceptions—Significant Change in Law—Appellate Decision—Retroactivity—W.R. Case.**

Whether the decision in *State v. W.R.*, 181 Wn.2d 757, 336 P.3d 1134 (2014), holding that a defendant in a prosecution for rape by forcible compulsion does not bear the burden of proving that the alleged victim consented to sexual intercourse, constitutes a “significant change in law” that applies retroactively, exempting a personal restraint petition from the one-year limit on collateral relief under [RCW 10.73.100\(6\)](#).

No. 92421-0, *In re Pers. Restraint of Colbert* (Petitioner).

[Top](#)

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**Statutes—Construction— Counties—Joint Self-Insurance Agreement—Contracts—Insurance—Liability Policy—Duty to Defend**

Whether a county risk pool created under chapters [48.62](#) and [39.34 RCW](#) had a duty to defend a county and its employee under a joint self-insurance liability policy, and whether the existence of such a duty to defend is properly analyzed under principles of contract law or principles of insurance law where [RCW 48.01.050](#) provides that two or more local governmental entities that join together to jointly self-insure “are not an ‘insurer’ under this code.”

No. 91154-1, *Wash. Counties Risk Pool, et al.* (respondents) v. *Clark County, Wash., et al.* (petitioners). (*See also: Counties—Joint Self-Insurance Agreement Assignments—After Loss—Prohibition*).

[Top](#)

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**Taxation—Business & Occupation Tax—Exemptions—Direct Seller’s Representative—Statutes—Amendment—Retroactivity—Validity—Due Process**

Whether a 2010 statutory amendment enacted in response to *Dot Foods, Inc. v. Department of Revenue*, 166 Wn.2d 912, 215 P.3d 185 (2009), narrowing the applicability of the direct seller’s exemption from Washington’s business and occupation tax, may constitutionally be applied retroactively to a pending tax refund claim for tax periods predating the amendment.

No. 92398-1, *Dot Foods, Inc.* (respondent/cross-appellant) v. *Dep’t of Revenue* (appellant/cross-respondent). (*See also: Judgment—Collateral Estoppel—Applicability—Appellate Decision—Subsequent Retroactive Legislative Amendment—Pending Tax Refund Claim*).

[Top](#)

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**January Term 2016**  
**Cases Set for Oral Argument**

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**\*Agriculture—Farm Labor Contractors—License—Necessity—Agent—Liability for Agent’s Failure to Obtain License—Knowing Use of Unlicensed Contractor—Failure to Verify Whether Contractor Licensed**

Whether in this class action for violation of the Farm Labor Contractor Act, chapter [19.30 RCW](#), an entity that was paid a fee to manage all aspects of farming an apple orchard, including hiring workers and making all planting and harvesting decisions, was a “farm labor contractor” required to have a license under the act, and if so, whether two companies who contracted with the unlicensed contractor to manage the orchard are jointly and severally liable under [RCW 19.30.200](#) for “knowingly” using an unlicensed contractor’s services when they did not know the contractor was unlicensed but failed to inspect the license or verify whether the contractor was licensed.

No. 91945-3, *Saucedo, et al.* (appellees) v. *John Hancock Life & Health Ins. Co., et al.* (appellants). (Oral argument 1/14/16).

Certified from U. S. Court of Appeals, Ninth Circuit.

No. [13-35955](#) (9<sup>th</sup> Cir.).

[Top](#)

---

**\*Animals—Dogs—Liability for Attack—Statutory Provisions—Strict Liability—Exception—Lawful Application of Police Dog—Bite Against Police Officer**

Whether a police dog was “lawfully applied” for purposes of avoiding strict liability for a bite under [RCW 16.08.040\(2\)](#) where the dog while working on an active crime scene bit a police officer who was also working on the scene.

No. 91761-2, *Bryent and Patricia Finch* (petitioners) v. *Thurston County Sheriff’s Office, et al.* (respondent). (Oral argument 1/19/16).

[Unpublished](#)

[Top](#)

---

**\*Attorney and Client—Malpractice—Criminal Defense Lawyer—Elements—Innocence of Underlying Crime—Exception—Uncorrected Sentencing Error**

Whether a plaintiff must prove his actual innocence in order to pursue a malpractice action alleging that his lawyers' negligent failure to act after an appellate court remanded for resentencing caused him to serve a longer sentence, and whether an exception to the actual innocence doctrine applies if the sentence the plaintiff served was within the standard range and not beyond what could lawfully be imposed.

No. 91567-9, *Piris (petitioner) v. Alfred Kitching, et al., (respondents)*. (Oral argument 1/12/16).

[186 Wn. App. 265 \(2015\)](#)

[Top](#)

---

**\*Condominiums—Declaration—Amendment—Statutory Provisions—Voting Percentage—Ninety Percent Requirement—Change in Uses to Which Units Are Restricted—“Uses”—Scope—Leasing**

Whether an amendment to a condominium association's declaration limiting the number of condominium units that may be leased at any one time changed the “uses” to which units were restricted, requiring approval of 90 percent of the voting owners of the association pursuant to [RCW 64.34.264\(4\)](#) of the Washington Condominium Act.

No. 91247-5, *Bilanko (respondent) v. Barclay Court Owners Ass'n* (appellant). (Oral argument 2/18/16).

[Top](#)

---

**\*Constitutional Law—Freedom of Speech—Begging—Time, Place, and Manner Restriction—Place Restriction—Highway On and Off Ramps—Traditional Public Forum—Content Neutrality**

Whether a city of Lakewood ordinance prohibiting persons from “begging” (asking for money or goods as charity) on highway on and off ramps violates First Amendment free speech rights.

No. 91827-9, [City of Lakewood \(respondent\) v. Willis \(petitioner\)](#). (Oral argument 2/16/16).

[Unpublished](#)

[Top](#)

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**\*Criminal Law—Confessions—Voluntariness—Information Required by Jail Authorities as a Condition for Receiving Safe Housing—Gang Affiliation Documentation—Right of Confrontation—Harmless Error**

Whether in a criminal prosecution against multiple defendants, statements of gang affiliation made by the defendants in a jail’s gang documentation forms, which are intended to prevent rival gang members from being housed together for their safety, constituted involuntary statements inadmissible at trial, and whether their admission violated the codefendants’ confrontation rights, and if so, whether admission of the forms was harmless.

No. 91185-1, *State* (respondent) v. *Anthony Deleon, Ricardo Deleon, and Octavio Robledo* (respondents). (Oral argument 2/23/16). ([See also Criminal Law—Punishment—Sentence—Outside Standard Range—Aggravating Circumstances—Gang Activity—Proof—Generalized Gang Evidence—Admissibility—Harmless Error.](#))

[Deleon Petition for Review](#)  
[Robledo Petition for Review](#)  
[State cross petition for review](#)

[185 Wn. App. 171 \(2015\)](#)

[Top](#)

---

**\*Criminal Law—Domestic Violence—Evidence—Other Offenses or Acts—Prior Acts of Domestic Violence—Lack of Victim Recantation—Admissibility**

Whether in a prosecution for unlawful imprisonment in connection with domestic violence, the defendant’s history of domestic violence against the complaining witness was admissible under [ER 404\(b\)](#) as evidence the witness was constrained without consent even though the witness did not recant her allegations against the defendant.

No. 91771-0, [State \(respondent\) v. Ashley, Jr. \(petitioner\)](#). (Oral argument 2/18/16).

[187 Wn. App. 908 \(2015\)](#)

[Top](#)

---

**\*Criminal Law—Evidence—Hearsay—Right of Confrontation—Statement of Nontestifying Codefendant—Redaction—Sufficiency—Name Replaced With “The First Guy”**

Whether in a felony murder prosecution the defendant’s constitutional right to confront witnesses against him was violated by the admission at trial of a nontestifying codefendant’s out-of-court statements that had been redacted to replace the name of the defendant with “the first guy.”

No. 91438-9, [State \(petitioner\) v. Fisher & Trosclair \(respondents\)](#). (Oral argument 1/14/16)

[184 Wn. App. 766 \(2014\)](#)

[Top](#)

---

**\*Criminal Law—Hearsay—Prior Inconsistent Statement—Other Proceeding—Statement Given to Police**

Whether in a criminal prosecution a witness’s written statement to police signed under oath and inconsistent with the witness’s trial testimony was admissible at trial as a statement that was not hearsay because it was given “at a trial, hearing, or other proceeding” within the meaning of [ER 801\(d\)\(1\)\(i\)](#).

No. 91669-1, [State \(respondent\) v. Otton \(petitioner\)](#). (Oral argument 2/18/16)

[Unpublished](#)

[Top](#)

---

**\*Criminal Law—Homicide—Felony Murder—Robbery as Predicate Felony—Accomplice—Affirmative Defense—Lack of Knowledge Codefendants Were Armed and Planned a Robbery—Jury Instruction—Necessity—Evidence in Support**

Whether in a felony murder prosecution predicated on the commission of robbery the trial court erred in failing to instruct the jury on the defendant’s claimed affirmative defense that she lacked knowledge that her codefendants were armed and planned a robbery. *See* [RCW 9A.32.030\(1\)\(c\)](#).

No. 91438-9, *State* (petitioner) *v. Fisher & Trosclair* (respondents). (Oral argument 1/14/16)

[184 Wn. App. 766 \(2014\)](#)

[Top](#)

---

**\*Criminal Law—Punishment—Death Penalty—Eligibility—Arbitrary and Capricious Application**

Whether [RCW 10.95.020](#) fails to sufficiently narrow the class of defendants eligible for the death penalty so as to prevent random and arbitrary imposition of the death penalty.

No. 88086-7, *State* (respondent) *v. Gregory* (appellant). (Oral argument 2/25/16). (*See also*: [Criminal Law—Punishment—Death Penalty—Reversal on Appeal—New Special Sentencing Proceeding—Statutory Authority—Discretion of Prosecutor—Validity—Cruel and Unusual Punishment—Due Process](#); [Criminal Law—Punishment—Death Penalty—Review—Proportionality—Cruel Punishment—State Constitution—Absence of Violent Criminal Record—Only One Victim](#); [Criminal Law—Punishment—Death Penalty—Review—Proportionality—Finding by State Supreme Court—Right to Jury Trial](#); [Criminal Law—Punishment—Death Penalty—Special Sentencing Procedure—Evidence—Statutory Provisions—“Facts and Circumstances of Murder”—Vagueness](#); [Criminal Law—Punishment—Death Penalty—Special Sentencing Procedure—Jury—Selection—Disqualification—Misunderstanding of Burden of Proof](#); [Criminal Law—Punishment—Death Penalty—Special Sentencing Procedure—Prosecutor’s Conduct—Misconduct—Argument—“Declare the Truth”—Value of Mitigation Evidence—Comparison With Victim’s Rights—Characterization of Severity of the Crime—Comment on Defendant’s Demeanor.](#))

[Top](#)

---

**\*Criminal Law—Punishment—Death Penalty—Reversal on Appeal—New Special Sentencing Proceeding—Statutory Authority—Discretion of Prosecutor—Validity—Cruel and Unusual Punishment—Due Process**

Whether in this death penalty prosecution in which the death sentence originally imposed was reversed on appeal and the case was remanded for resentencing, [RCW 10.95.090](#) prohibits the prosecutor from again seeking the death penalty, and if not, whether the prosecutor's discretion to again seek the death penalty violates the Eighth and Fourteenth Amendments to the United States Constitution.

No. 88086-7, *State* (respondent) v. *Gregory* (appellant). (Oral argument 2/25/16).  
(*See also*: [Criminal Law—Punishment—Death Penalty—Eligibility—Arbitrary and Capricious Application](#); [Criminal Law—Punishment—Death Penalty—Review—Proportionality—Cruel Punishment—State Constitution—Absence of Violent Criminal Record—Only One Victim](#); [Criminal Law—Punishment—Death Penalty—Review—Proportionality—Finding by State Supreme Court—Right to Jury Trial](#); [Criminal Law—Punishment—Death Penalty—Special Sentencing Procedure—Evidence—Statutory Provisions—“Facts and Circumstances of Murder”—Vagueness](#); [Criminal Law—Punishment—Death Penalty—Special Sentencing Procedure—Jury—Selection—Disqualification—Misunderstanding of Burden of Proof](#); [Criminal Law—Punishment—Death Penalty—Special Sentencing Procedure—Prosecutor's Conduct—Misconduct—Argument—“Declare the Truth”—Value of Mitigation Evidence—Comparison With Victim's Rights—Characterization of Severity of the Crime—Comment on Defendant's Demeanor.](#))

[Top](#)

---

**\*Criminal Law—Punishment—Death Penalty—Review—Proportionality—Cruel Punishment—State Constitution—Absence of Violent Criminal Record—Only One Victim**

Whether in this death penalty prosecution the death sentence was disproportionate and constituted cruel punishment under article I, section 14 of the Washington Constitution when the defendant lacked a history of violent felonies and killed a single victim.

No. 88086-7, *State* (respondent) v. *Gregory* appellant). (Oral argument 2/25/16). (*See also*: [Criminal Law—Punishment—Death Penalty—Eligibility—Arbitrary and Capricious Application](#); [Criminal Law—Punishment—Death Penalty—Reversal on Appeal—New Special Sentencing Proceeding—Statutory Authority—Discretion of Prosecutor—Validity—Cruel and Unusual Punishment—Due Process](#); [Criminal Law—Punishment—Death Penalty—Review—Proportionality—Finding by State Supreme Court—Right to Jury Trial](#); [Criminal Law—Punishment—Death Penalty—Special Sentencing Procedure—Evidence—Statutory Provisions—“Facts and Circumstances of Murder”—Vagueness](#); [Criminal Law—Punishment—Death Penalty—Special Sentencing Procedure—Jury—Selection—Disqualification—Misunderstanding of Burden of Proof](#); [Criminal Law—Punishment—Death Penalty—Special Sentencing Procedure—Prosecutor’s Conduct—Misconduct—Argument—“Declare the Truth”—Value of Mitigation Evidence—Comparison With Victim’s Rights—Characterization of Severity of the Crime—Comment on Defendant’s Demeanor.](#))

**\*Criminal Law—Punishment—Death Penalty—Review—Proportionality—  
Finding by State Supreme Court—Right to Jury Trial**

Whether [RCW 10.95.130\(2\)](#) violates the Sixth, Eighth, and Fourteenth Amendments to the United States Constitution by assigning to the Washington Supreme Court rather than to the jury the task of determining the proportionality of a death sentence.

No. 88086-7, *State* respondent) v. *Gregory* (appellant) (Oral argument 2/25/16). (*See also*: [Criminal Law—Punishment—Death Penalty—Eligibility—Arbitrary and Capricious Application](#); [Criminal Law—Punishment—Death Penalty—Reversal on Appeal—New Special Sentencing Proceeding—Statutory Authority—Discretion of Prosecutor—Validity—Cruel and Unusual Punishment—Due Process](#); [Criminal Law—Punishment—Death Penalty—Review—Proportionality—Cruel Punishment—State Constitution—Absence of Violent Criminal Record—Only One Victim](#); [Criminal Law—Punishment—Death Penalty—Special Sentencing Procedure—Evidence—Statutory Provisions—“Facts and Circumstances of Murder”—Vagueness](#); [Criminal Law—Punishment—Death Penalty—Special Sentencing Procedure—Jury—Selection—Disqualification—Misunderstanding of Burden of Proof](#); [Criminal Law—Punishment—Death Penalty—Special Sentencing Procedure—Prosecutor’s Conduct—Misconduct—Argument—“Declare the Truth”—Value of Mitigation Evidence—Comparison With Victim’s Rights—Characterization of Severity of the Crime—Comment on Defendant’s Demeanor.](#))

[Top](#)

---



**\*Criminal Law—Punishment—Death Penalty—Special Sentencing Procedure—Evidence—Statutory Provisions—“Facts and Circumstances of Murder”—Vagueness**

Whether [RCW 10.95.060\(3\)](#) is unconstitutionally vague in allowing the State to present evidence “concerning the facts and circumstances of the murder” at the penalty phase of a death penalty prosecution.

No. 88086-7, *State* (respondent) v. *Gregory* (appellant) (Oral argument 2/25/16). (*See also*: [Criminal Law—Punishment—Death Penalty—Eligibility—Arbitrary and Capricious Application](#); [Criminal Law—Punishment—Death Penalty—Reversal on Appeal—New Special Sentencing Proceeding—Statutory Authority—Discretion of Prosecutor—Validity—Cruel and Unusual Punishment—Due Process](#); [Criminal Law—Punishment—Death Penalty—Review—Proportionality—Cruel Punishment—State Constitution—Absence of Violent Criminal Record—Only One Victim](#); [Criminal Law—Punishment—Death Penalty—Review—Proportionality—Finding by State Supreme Court—Right to Jury Trial](#); [Criminal Law—Punishment—Death Penalty—Special Sentencing Procedure—Jury—Selection—Disqualification—Misunderstanding of Burden of Proof](#); [Criminal Law—Punishment—Death Penalty—Special Sentencing Procedure—Prosecutor’s Conduct—Misconduct—Argument—“Declare the Truth”](#)—[Value of Mitigation Evidence—Comparison With Victim’s Rights—Characterization of Severity of the Crime—Comment on Defendant’s Demeanor.](#))

[Top](#)

---

**\*Criminal Law—Punishment—Death Penalty—Special Sentencing Procedure—Jury—Selection—Disqualification—Misunderstanding of Burden of Proof**

Whether in this death penalty prosecution the trial court erred in declining to excuse for cause a juror who had repeatedly expressed the belief that the defendant would have to prove to the juror that life without early release rather than death was the proper punishment.

No. 88086-7, *State* (respondent) v. *Gregory* (appellant) (Oral argument 2/25/16). (*See also*: [Criminal Law—Punishment—Death Penalty—Eligibility—Arbitrary and Capricious Application](#); [Criminal Law—Punishment—Death Penalty—Reversal on Appeal—New Special Sentencing Proceeding—Statutory Authority—Discretion of Prosecutor—Validity—Cruel and Unusual Punishment—Due Process](#); [Criminal Law—Punishment—Death Penalty—Review—Proportionality—Cruel Punishment—State Constitution—Absence of Violent Criminal Record—Only One Victim](#); [Criminal Law—Punishment—Death Penalty—Review—Proportionality—Finding by State Supreme Court—Right to Jury Trial](#); [Criminal Law—Punishment—Death Penalty—Special Sentencing Procedure—Evidence—Statutory Provisions—“Facts and Circumstances of Murder”—Vagueness](#); [Criminal Law—Punishment—Death Penalty—Special Sentencing Procedure—Prosecutor’s Conduct—Misconduct—Argument—“Declare the Truth”—Value of Mitigation Evidence—Comparison With Victim’s Rights—Characterization of Severity of the Crime—Comment on Defendant’s Demeanor.](#))

**\*Criminal Law—Punishment—Death Penalty—Special Sentencing Procedure—Prosecutor’s Conduct—Misconduct—Argument—“Declare the Truth”—Value of Mitigation Evidence—Comparison With Victim’s Rights—Characterization of Severity of the Crime—Comment on Defendant’s Demeanor**

Whether in this death penalty prosecution the prosecutor engaged in misconduct warranting a new sentencing proceeding by stating during penalty phase closing argument that the jury in its verdict should “speak the truth,” that the mitigation evidence was the “best that could be said” about the defendant, that the defendant had rights while the victim did not, and that the defendant’s crime was “as bad as it gets,” and by commenting on the defendant’s demeanor.

No. 88086-7, *State* (respondent) v. *Gregory* (appellant). (Oral argument 2/25/16). (*See also*: [Criminal Law—Punishment—Death Penalty—Eligibility—Arbitrary and Capricious Application](#); [Criminal Law—Punishment—Death Penalty—Reversal on Appeal—New Special Sentencing Proceeding—Statutory Authority—Discretion of Prosecutor—Validity—Cruel and Unusual Punishment—Due Process](#); [Criminal Law—Punishment—Death Penalty—Review—Proportionality—Cruel Punishment—State Constitution—Absence of Violent Criminal Record—Only One Victim](#); [Criminal Law—Punishment—Death Penalty—Review—Proportionality—Finding by State Supreme Court—Right to Jury Trial](#); [Criminal Law—Punishment—Death Penalty—Special Sentencing Procedure—Evidence—Statutory Provisions—“Facts and Circumstances of Murder”—Vagueness](#); [Criminal Law—Punishment—Death Penalty—Special Sentencing Procedure—Jury—Selection—Disqualification—Misunderstanding of Burden of Proof](#).)

**\*Criminal Law—Punishment—Sentence—Outside Standard Range—Aggravating Circumstances—Gang Activity—Proof—Generalized Gang Evidence—Admissibility—Harmless Error**

Whether in this prosecution for first degree assault in which the State sought exceptional sentences based intent to benefit a street gang, [RCW 9.94A.535\(3\)\(aa\)](#), the trial court erred in admitting generalized evidence of street gang activity and membership, and if so, whether the error was harmless.

No. 91185-1, *State* (respondent) v. *Ricardo Deleon, Anthony Deleon and Octavio Robledo* (petitioners). (Oral argument 2/23/16). ([See also Criminal Law—Confessions—Voluntariness—Information Required by Jail Authorities as a Condition for Receiving Safe Housing—Gang Affiliation Documentation—Right of Confrontation—Harmless Error.](#))

[Deleon Petition for Review](#)  
[Robledo Petition for Review](#)  
[State cross petition for review](#)

[185 Wn. App. 171 \(2015\)](#)

[Top](#)

---

**\*Criminal Law—Review—Costs—Substantially Prevailing Party—Withdrawal of Counsel After Filing *Anders* Brief**

Whether for purposes of awarding costs under [RAP 14.2](#) to the party who “substantially prevailed on review” of a criminal conviction, the State was the prevailing party where the conviction was affirmed after the defendant’s counsel filed a brief and was allowed to withdraw under the procedure outlined in *Anders v. California*, 386 U.S. 738, 744, 87 S. Ct. 1396, 18 L. Ed. 2d 493 (1967).

No. 91531-8, *State* (respondent) v. *Stump* (petitioner). (Oral argument 1/28/16).

Unpublished

[Top](#)

---

**\*Criminal Law—Searches and Seizures—Warrantless Search—Validity—Abandoned Property —Flight from Stolen Vehicle—Pursuit of Fleeing Suspect—Search of Cellular Telephone**

Whether police lawfully searched a criminal defendant’s cellular telephone without a warrant on the basis that the defendant had abandoned the telephone by leaving it in a stolen vehicle when he fled to avoid police apprehension, and the search was conducted only to reach a person on the list of “contacts,” and thereby identify the fleeing defendant.

No. 91532-6, *State (respondent) v. Samalia (petitioner)*. (Oral argument 1/12/16).

[186 Wn. App. 224 \(2015\)](#)

[Top](#)

---

**\*Criminal Law—Trial—Misconduct of Prosecutor—Argument—Witnesses—Failure to Call—Available Corroborative Witness**

Whether, in a prosecution for methamphetamine possession, the prosecutor committed misconduct in commenting on the defendant’s failure to call a witness to support his unwitting possession affirmative defense.

No. 91660-8, *State (petitioner) v. Sundberg (respondent)*. (Oral argument 1/19/16).

[Unpublished](#)

[Top](#)

---

**\*Deeds of Trust—Defaulting Borrower—Lender Entry into Premises Prior to Foreclosure and Trustee’s Sale—Predefault Agreement Permitting Entry—Validity—Receivership Statute—Exclusivity of Preforeclosure Remedy**

Whether under Washington’s lien theory of mortgages and its ejectment statute, [RCW 7.28.230\(1\)](#), a borrower and a lender may execute a predefault agreement allowing the lender to enter, maintain, and secure the encumbered property before foreclosure and sale, or whether instead Washington’s receivership statute, chapter [7.60 RCW](#), provides the exclusive remedy for lender entry into encumbered property before foreclosure absent postdefault consent of the borrower.

No. 92081-8, *Laura Zamora Jordan* (plaintiff) v. *Nationstar Mortgage, LLC* (defendant). (Oral argument 1/19/16).

Certified From: United States District Court, Eastern District of Washington

No. 2:14-CV-0175-TOR (E.D. Wash.)

[Top](#)

---

**\*Eminent Domain—Compensation—Litigation Costs—30-Day Settlement Offer—Modification of Scope of Condemnation at Trial—Effect**

Whether in this eminent domain action in which Sound Transit condemned a parcel of land for an easement, the property owner is entitled to litigation costs under [RCW 8.25.070\(1\)](#) in connection with the trial on just compensation when Sound Transit made an initial 30-day settlement offer but then modified the scope of the easement sought at trial.

No. 91653-5, *Cent. Puget Sound Reg’l Transit Auth.* (respondent) v. *Airport Inv. Co.* (petitioner). (Oral argument 1/21/16). (*See also:* [Eminent Domain—Compensation—Proof—Hearsay—Admission of Party Opponent—Out-of-Court Expert Valuation.](#)).

Unpublished

[Top](#)

---

**\*Eminent Domain—Compensation—Proof—Hearsay—Admission of Party Opponent—Out-of-Court Expert Valuation**

Whether in an eminent action the trial court properly admitted the property owner's personal belief as to the property's value, derived from an out-of-court expert valuation, as an admission of a party opponent exempt from the hearsay rule, or whether the testimony was inadmissible as conveying an out-of-court expert opinion.

No. 91653-5, *Cent. Puget Sound Reg'l Transit Auth. (respondent) v. Airport Inv. Co. (petitioner)*. (Oral argument 1/21/16). (*See also*: [Eminent Domain—Compensation—Litigation Costs—30-Day Settlement Offer—Modification of Scope of Condemnation at Trial—Effect.](#)).

[Unpublished](#)

[Top](#)

---

**\*Employment—Compensation—Damages for Nonpayment of Wages—Attorney Fees—Statutory Provisions—“Action”—What Constitutes—Administrative Appeal of Disciplinary Action**

Whether a city of Seattle employee's successful administrative appeal of a disciplinary action before the city civil service commission, in which the employee recovered back pay, entitled the employee to an award of reasonable attorney fees under [RCW 49.48.030](#), which provides for an award of attorney fees to an employee who recovers wages or salary owed in “any action” against an employer.

No. 91742-6, *Arnold (respondent) v. City of Seattle, d/b/a Human Services Dep't (petitioner)*. (Oral argument 1/12/16).

[186 Wn. App. 653 \(2015\)](#)

[Top](#)

---

**\*Industrial Insurance—Assessments—Premiums—Eligibility—Workers—Worker or Independent Contractor—Franchisee**

Whether franchisees of a commercial cleaning services franchisor who personally perform the cleaning services, using the franchisor’s cleaning methods and approved equipment, are “workers” for whom the franchisor must pay industrial insurance premiums and who are not excluded from the purview of the Industrial Insurance Act under [RCW 51.08.195\(3\)](#).

No. 91610-1, *Dep’t of Labor & Indus., (respondent) v. Lyons Enters. Inc., D/B/A Jan-Pro Cleaning Sys., (petitioner)*. (Oral argument 1/21/16).

[186 Wn. App. 518 \(2015\)](#)

[Top](#)

---

**\*Insurance—Property Damage—Water Damage—Exclusions—Suspension of Coverage During Vacancy of Building—Effective Date of Suspension**

Whether an endorsement in a commercial property insurance contract suspending coverage for water damage during the vacancy of the property suspended coverage at the beginning of any vacancy or only after 60 days of vacancy.

No. 91777-9, *Lui and Lui (petitioners) v. Essex Ins. Co. (respondents)*. (Oral argument 3/10/16).

[Unpublished](#)

[Top](#)

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**\*Judgment—Collateral Estoppel—Applicability—Appellate Decision—  
Subsequent Retroactive Legislative Amendment—Pending Tax Refund Claim**

Whether 2010 legislation that retroactively narrowed the applicability of an exemption from the Washington business and occupation tax in response to *Dot Foods, Inc. v. Department of Revenue*, 166 Wn.2d 912, 215 P.3d 185 (2009), relating to a taxpayer's tax refund claim for the tax periods from January 2000 through April 2006, preserved the collateral estoppel effect of that decision as to the same taxpayer's refund claim for the tax periods from May 2006 through December 2007, and, if not, whether the legislation violated separation of powers principles.

No. 92398-1, *Dot Foods, Inc.*, (respondent/cross-appellant) v. *Dep't of Revenue* (appellant/ cross-respondent). (Oral argument 1/28/16). ([See also: Taxation—Business & Occupation Tax—Exemptions—Direct Seller's Representative—Statutes—Amendment—Retroactivity—Validity—Due Process](#)).

[Top](#)

---

**\*Juveniles—Juvenile Justice—Disposition—Conditions—Letter of Apology—  
Validity—First Amendment**

Whether a condition of a juvenile disposition for assault with sexual motivation requiring the offender to write an apology letter to the victim violates the First Amendment free speech right.

No. 91934-8, *State* (respondent) v. *K.H.-H.* (petitioner). (Oral argument 2/16/16).

[188 Wn. App. 413 \(2015\)](#)

[Top](#)

---

**\*Mental Health—Involuntary Commitment—Probable Cause Hearing—Privacy—Use of Initials in Place of Full Name**

Whether in connection with a petition for continued detention of a person for involuntary mental health treatment, courts should use the person's initials in place of the person's full name.

No. 91950-0, *In re the Det. of W.C.C.* (Oral argument 2/16/16). ([See also: Mental Health—Involuntary Commitment—Hearing—Probable Cause Hearing—Timeliness—Continuance—End of Period—Excluded Days](#)).

187 Wn. App. 303 (2015)

[Top](#)

---

**\*Mental Health—Involuntary Commitment—Probable Cause Hearing—Timeliness—Continuance—End of Period—Excluded Days**

Whether holidays and weekends are excluded in calculating the maximum period allowed for a continuance under [RCW 71.05.240\(1\)](#) for a probable cause hearing on a petition for continued detention of a person for involuntary mental health treatment.

No. 91950-0, *In re the Det. of W.C.C.* (Oral argument 2/16/16). ([See also: Mental Health—Involuntary Commitment—Probable Cause Hearing—Privacy—Use of Initials in Place of Full Name](#)).

187 Wn. App. 303 (2015)

[Top](#)

---

**\*Negligence—Duty—Protection of Others—Special Relationship—Actor and Third Person—Criminal Acts of Third Person—“Taking Charge” of Third Person—Scope of Duty—Jail Inmate—Mental Health Issues—Failure to Examine and Treat**

Whether in a negligence action against a county stemming from the death or injury of several persons at the hands of a former jail inmate a month after his release from jail, the county may be liable under its “take charge” duty to control the inmate on the basis of its alleged failure to adequately diagnose and treat the inmate for his mental condition while he was incarcerated.

No. [91644-6](#), *Binschus, et al* (respondents) *v. Skagit County* petitioner. (Oral argument 1/14/16)

[186 Wn. App. 77](#) (2015)

[Top](#)

---

**\*Property—Title—Recording of Liens—Negligence—Duties—Scope— Third Parties**

Whether a title company owes a duty of care to third parties to refrain from negligently recording legal instruments.

No. 91932-1, *Centurion Properties III, LLC, et al.* (appellants) *v. Chicago Title Ins. Co.* (respondent). (Oral argument 1/21/16).

Certified from U. S. Court of Appeals, Ninth Circuit.

Nos. [13-35725](#) & [13-35692](#) (9<sup>th</sup> Cir.).

[Top](#)

---

**\*Schools—Students—Supervision—Duty—Reasonably Foreseeable Dangers—  
Student With History of Sexually Assaultive Behavior—Registered Sex Offender**

Whether in a negligence action against a school district by a student who was sexually assaulted off campus by a fellow student who was a registered sex offender, the district had a duty to supervise and monitor the sex offender student so as to protect the plaintiff from sexual assault.

No. 91775-2, *N. L. (respondent) v. Bethel School District (petitioner)*. (Oral argument 1/28/16).

187 Wn. App. 460 (2015)

[Top](#)

---