

WASHINGTON STATE COURT OF APPEALS DIVISION THREE

CASE SUMMARIES FOR ORAL ARGUMENT

The following summaries are drawn from briefs and lower court judgments. The summaries have not been reviewed for accuracy by the judges and are intended to provide a general idea of facts and issues presented in the cases. The summaries should not be considered official court documents. Facts and issues presented in these summaries should be checked for accuracy against records and briefs, available from the Court, which provide more specific information.

Date of Hearing: Thursday, May 2, 2019
Location: Walla Walla – Whitman College

9:30 a.m.

1) No.: 36189-6-III

Case Name: Borton & Sons, Inc. v. Burbank Properties, LLC

County: Walla Walla

Case Summary: Burbank Properties, LLC sold farm land to Borton & Sons, Inc. at below market value to create cash flow in the midst of a financial struggle. Borton granted Burbank a three year lease ending December 31, 2018, so Burbank could continue to farm the land. The lease gave Burbank an option to repurchase the land, if exercised by December 31, 2017. Due to a mistake, Burbank did not mail its notice exercising the option until January 4, 2018. Borton advised Burbank the notice was untimely and demanded it acknowledge the option was terminated. Burbank responded that it intended to close the sale. Borton then filed a declaratory action seeking judgment that Burbank had not timely exercised the option to purchase and the lease would expire by its terms on December 31, 2018. Both parties moved for summary judgment. In denying Borton's motion and granting Burbank's motion, the court ordered that Burbank was entitled to an equitable grace period to exercise the option and purchase the property per the terms of the lease and option agreement. The court also awarded Burbank attorney fees. Borton appeals.

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- 2) **No.: 36065-2-III**
Case Name: Junghee Kim Spicer, et al v. Paul Patnode
County: Yakima

Case Summary: Junghee and David Spicer ran a music lessons business out of their home in Selah. Over a several-month period, their neighbor, Paul Patnode, repeatedly harassed students arriving at the Spicer's home by remote-starting his Ford F-250 pickup and setting off the alarm. Spicers filed suit against Patnode for intentional interference with a contractual relationship and intentional infliction of emotional distress. Junghee Spicer testified at the bench trial that she was fearful for her safety and the safety of her students, and that she suffered insomnia and anxiety due to Patnode's conduct. The court dismissed the interference with contract claim for lack of damages, but awarded Spicers \$40,000 on the emotional distress claim. Patnode appeals.

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10:30 a.m.

- 3) **No.: 35362-1-III (Anchor Case)**
Consolidated: 35363-0-III
Case Name: State of Washington v. Bradley Leith Merson
County: Yakima

Case Summary: Bradley Merson was convicted in two separate prosecutions for several sex offenses and one drug offense arising out of relationships with underage females, K.F. and J.M. In the case involving K.F., Merson gave her a Samsung Galaxy phone for her use. K.F.'s parents had also given her an iPhone. K.F. disclosed the relationship with Merson to her parents, who then turned both phones over to law enforcement. The parents gave written consent to search the iPhone and verbal consent to search the Samsung. A detective extracted inculpatory text messages from both phones. Merson moved to suppress the Samsung messages on grounds he owned the phone and K.F.'s parents had no authority to consent to its search. The court denied the motion and admitted the messages into evidence. The text messages were the basis for convicting Merson of communication with a minor for immoral purposes. Merson appeals that conviction. Merson also appeals discretionary legal financial obligations that the court imposed in the separate judgment and sentence for each case.

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4) **No.: 36044-0-III**

Case Name: State of Washington v. Josue Manuel Osorio Lopez

County: Yakima

Case Summary: A drug task force detective observed a suspected drug transaction in Sunnyside and ordered deputies to stop Josue Lopez's vehicle for an investigative detention. Cocaine, a digital scale, and a handgun were found in Lopez's vehicle. The State charged Lopez with possession of a controlled substance with intent to deliver. He filed a pretrial motion to suppress the evidence as the fruit of an unlawful vehicle stop. The court ruled the investigatory stop lawful and denied Lopez's motion on grounds the officers had reasonable articulable suspicion he was involved in criminal activity. Lopez was convicted as charged in a bench trial. He appeals.

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