

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: Tuesday, January 28, 2020
Location: Spokane, 500 North Cedar

9:00 a.m.

- 1) **No.: 36298-1-III**
Case Name: Sandra Downing, et al. v. Blair Losvar, et al.
County: Okanogan
Case Summary: The Downings filed a products liability suit against aircraft manufacturer Textron Aviation, Inc. Textron sought dismissal based upon lack of personal jurisdiction. The superior court denied Textron's motion. This Court granted Textron's motion for discretionary review.

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- 2) **No.: 36046-6-III**
Case Name: State v. James Patton Gearhard
County: Klickitat
Case Summary: While investigating allegations of child molestation, law enforcement worked with the alleged victim to set up and record a conversation with Mr. Gearhard, which resulted in the trial court finding Mr. Gearhard guilty of witness

tampering. The trial court also entered a directed verdict dismissing one of the underlying counts due to an error in the jury instructions. Mr. Gearhard appeals the trial court's refusal to suppress the phone call as violative of Washington's Communications Privacy Act, chapter 9.73, RCW. The State cross-appeals the directed verdict.

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10:00 a.m.

- 3) **No.: 35035-5-III**
Case Name: State v. Roy Howard Murry
County: Spokane

Case Summary: The State charged Roy Murry with murdering his estranged wife's family and attempted murder of his wife. At trial, Mr. Murry challenged the admission of nanoparticle testing under *Frye v. United States*, the admission of character and habit evidence, the admission of his internet search history and social media activities prior to the murders, and his wife's testimony that he maintained a hit list. The jury convicted Mr. Murry as charged. He now appeals these and other issues, including: the sufficiency of the evidence, the sufficiency of the charging information, and ineffective assistance of counsel.

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11:00 a.m.

- 4) **No.: 36439-9-III**
Case Name: Seven Hills, LLC, et al. v. Chelan County
County: Chelan

Case Summary: Seven Hills, LLC, sought to grow marijuana in an unincorporated part of Chelan County. But, Chelan County had enacted a temporary moratorium, followed by a permanent ban, on all marijuana production and processing. During the moratorium, Seven Hills obtained a marijuana producer's license from the State, and began growing marijuana. Chelan County's code enforcement division issued the business multiple county code violations, and ordered Seven Hills to abate the

violations. Seven Hills appealed the violations to the county's hearings examiner and the superior court, which both sided with the County and ordered Seven Hills to cease its activities. Seven Hills appeals the allocation of the burden of proof under the county's code, the sufficiency of the form in which the hearing examiner issued findings and conclusions, and the finding that Seven Hills did not have a vested right to continue production as a prior nonconforming use.

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5) No.: 35872-1-III, cons'd with 35911-5-III

Case Name: Julie M. Atwood v. Mission Support Alliance, LLC and Steve Young

County: Benton

Case Summary: Mission Support Alliance (MSA), a Hanford contractor, terminated Julie Atwood's employment. Ms. Atwood sued, claiming gender discrimination, retaliation, and wrongful discharge in violation of public policy. A jury awarded Ms. Atwood substantial damages. MSA appeals, raising several issues pertaining to the trial, including: exclusion of evidence under the hearsay rules, exclusion of a rebuttal witness as a discovery sanction, the admission of evidence under ER 404(b), the court's jury instruction on how to award future economic damages, and denial of MSA's motion for new trial and remittitur.

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