

# WASHINGTON STATE COURT OF APPEALS DIVISION THREE

## CASE SUMMARIES FOR ORAL ARGUMENT

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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.

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**Date of Hearing: Wednesday, September 12, 2018**  
**Location: Spokane, 500 North Cedar**  
**Panel: Robert Lawrence-Berrey, Kevin Korsmo, Laurel Siddoway**

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**9:00 a.m.**

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1) **No.: 347150**

**Case Name: Charles Peiffer v. Pro-Cut Concrete Cutting and Breaking, Inc., et al**

**County: Benton**

**Case Summary:** Pro-Cut Concrete and Cutting and Breaking, Inc. (Pro-Cut) employed Charles Peiffer between 1989 and 2012. During the course of his employment, Mr. Peiffer complained repeatedly about Pro-Cut's policy of not paying employees for the first and last 30 minutes of travel to job sites and Pro-Cut's alteration of his employee time cards to reflect the amount paid, rather than the hours worked. In 2012, Mr. Peiffer refused to return to work until Pro-Cut paid him his full wages for the time deducted on his most recent time card. Pro-Cut refused, and Mr. Peiffer filed a complaint with the Department of Labor and Industries (L&I). Over a year later, Mr. Peiffer filed suit against Pro-Cut, its owners, and his supervisor. Following a bench trial, the trial court determined that Pro-Cut willfully withheld \$42,768.12 in wages. The court also held that the statute of limitations tolled during L&I's investigation. In addition to the withheld wages, the trial court awarded Mr. Peiffer prejudgment interest, taxable consequences for the lump sum award, a portion of requested costs, and \$50,000 in attorney fees.

Pro-Cut appeals, contending (1) the statute of limitations did not toll during the Department's investigation, (2) the trial court erred by awarding Mr. Peiffer his attorney fees, and (3) Mr. Peiffer cannot recover his adverse tax consequences under the wage statutes.

Mr. Peiffer cross-appeals, claiming that (1) the trial court erred by dismissing his wrongful termination claim, (2) the trial court erroneously concluded Mr. Peiffer knowingly submitted to Pro-Cut's wage withholding and denied his request for double damages, (3) the court abused its discretion when it denied a multiplier for attorney fees, and (4) the court abused its discretion when it reduced the award of attorney fees.

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**2) No.: 355241**

**Case Name: State of Washington v. F.T.**

**County: Yakima**

**Case Summary:** F.T. was arrested and charged with third degree theft in May 2017 after she and her sister stole candy bars and clothing from a store in Union Gap. F.T., who was 16 at the time and had no prior criminal history, pleaded guilty. At her disposition hearing, the trial court heard testimony detailing F.T.'s extensive history of running away from foster care and DSHS service providers over the prior two years. The testimony also indicated that F.T. had a history of engaging in risky behavior, including drug and alcohol use, and that she was potentially being trafficked around the state and in Montana. Although she had no prior criminal history, the State requested a manifest injustice sentence of 27 to 36 weeks. The trial court imposed the requested manifest injustice sentence, finding it was necessary to provide F.T. with the services and treatment she had avoided while on the run. F.T. appeals, claiming that (1) the trial court impermissibly relied on her status as a dependent in determining that a manifest injustice sentence was appropriate, and (2) the trial court's findings of fact were not supported by substantial evidence.

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- 3) **No.: 353818**  
**Case Name: State of Washington v. Edward Lane Hart**  
**County: Chelan**

**Case Summary:** A.C. was born in March 1990. A few years later, her mother entered into a romantic relationship with Edward Hart and they later married. When A.C. was fourteen, she told her mother that Mr. Hart had sexually abused her for the past 9 years. A.C.'s mother did not believe her. A.C. also told Mr. Hart's attorney, a close family friend, about the abuse but the attorney did not believe A.C. either. Years later, following Mr. Hart's divorce from A.C.'s mother, A.C. restated her allegations. The State filed charges against Mr. Hart, who retained as defense counsel the attorney to whom A.C. had previously disclosed the abuse. The court granted the State's motion to disqualify the attorney, and Mr. Hart was appointed new counsel.

A.C.'s allegations included a statement that she could identify a birthmark on Mr. Hart's penis. At the time of Mr. Hart's arrest, police took pictures of Mr. Hart's penis that were unclear. After the State rested, Mr. Hart submitted into evidence pictures of his penis that showed no birthmark. The State argued in closing that Mr. Hart may have had plastic surgery to remove the birthmark, and defense's objection to this comment was sustained. Mr. Hart was found guilty of second-degree child rape and second-degree child molestation.

Mr. Hart appeals, contending (1) the court erred by disqualifying his initial attorney, (2) the State committed prosecutorial misconduct during closing argument, (3) the trial court erred by imposing community custody conditions prohibiting Mr. Hart from residing in a "community protection zone" and from possessing sexually explicit materials, and (4) the judgment and sentence contains a scrivener's error that must be corrected.

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**11:00 AM**

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- 4) **No.: 353397**  
**Case Name: Brooke Howell v. Dept. of Social & Health Services**  
**County: Yakima**

**Case Summary:** In 2015, Brooke Howell entered a program to become a certified nursing assistant. When her school conducted the mandatory Department of Social & Health Services (DSHS) background check, it discovered DSHS had issued a finding of child neglect against Ms. Howell in 2012 stemming from an arrest for driving

under the influence of alcohol. Ms. Howell was not allowed to complete the nursing program. Ms. Howell requested reconsideration of the child neglect finding, which was reversed by an administrative law judge but reinstated by the DSHS Board of Appeals in 2016.

In March 2017, Ms. Howell filed a complaint against DSHS, alleging that DSHS's policy of establishing, retaining and reporting founded findings of child abuse or neglect has a discriminatory effect on the ability of Native Americans and other racial minorities to obtain work in fields of their choosing, in violation of the Washington Law Against Discrimination (WLAD). The trial court granted DSHS's CR 12(c) motion to dismiss Ms. Howell's lawsuit on the pleadings. Ms. Howell appeals.

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5) **No.: 353729**

**Case Name: Connell Oil Inc. v. Erik McConnell Johnson, et al**

**County: Franklin**

**Case Summary:** In July 2014, Erik Johnson's wallet was stolen from his farm vehicle. The wallet contained, among other things, a card issued by Connell Oil, Inc. (Connell) allowing Mr. Johnson to gain access to Connell's unmanned fueling stations. The card, known as a "cardlock," requires a PIN to use the card, which was also in Mr. Johnson's stolen wallet. Several days after the theft, Mr. Johnson telephoned Connell. The parties dispute the substance of the conversation that took place: Mr. Johnson asserts that he asked Connell to cancel the stolen card and requested a replacement, while Connell maintains that Mr. Johnson asked for a replacement but never reported the card as stolen or asked Connell to cancel it. The person who illegally obtained the card used it to obtain over \$34,000 worth of fuel and was subsequently sentenced for first degree identity theft in connection with the theft of Mr. Johnson's card.

Connell sued Mr. Johnson and his wife to recover the \$34,000 in charges, along with interest, costs, and fees. The Johnsons asserted the affirmative defense that their liability was capped by the federal Truth in Lending Act (TILA), 15 U.S.C. § 1601, et seq., and "Regulation Z," 12 C.F.R. § 226.12(b)(1)(ii). The trial court granted Connell's motion for summary judgment. The Johnsons appeal.

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