

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, October 23, 2018
Location: Spokane, WA – 500 North Cedar
Panel: Kevin Korsmo, Laurel Siddoway, George Fearing

9:00 a.m.

1) **No.: 356761**

Case Name: Power City Electric, Inc. v. Washington State Dept. of Labor & Industries

County: Franklin

Case Summary: Power City Electric (PCE) contracted to reroute an underground power cable. An officer of the Department of Labor and Industries (Department) noticed the construction project and stopped to measure the excavation, which was approximately six feet wide by ten feet long. The depth of the excavation ranged from approximately 30 inches to 6 feet deep. The L&I officer observed there was no system in place to prevent cave-ins, that the excavated earth was located directly adjacent to the excavation, and that the only means of egress from the excavation was a notch cut in the side of the excavation.

The Department cited PCE for four serious WAC violations: (i) failing to implement a system to prevent cave-ins, (ii) failing to provide safe egress, (iii) failing to place the spoils pile at least two feet from the excavation, and (iv) failing to remove employees from hazardous conditions. Based on these violations, the Department imposed a fines totaling \$7,200. The Industrial Appeals Judge affirmed the Department

in part and reversed in part, but the Board of Industrial Insurance Appeals affirmed the Department in whole. The Superior Court affirmed the Board.

PCE appeals, contending the Superior Court erred by affirming the Board's conclusion that PCE committed four serious violations of the WAC.

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2) No.: 352412

Consolidated: 357465

Case Name: State of Washington v. Ericka Lynn Heller, aka Ericka McCandless

County: Spokane

Case Summary: On November 2, 2016, Ericka McCandless (aka Heller) was arrested and taken into custody following a high-speed chase in Spokane Valley. During the chase, one police officer attempted to conduct a post-PIT maneuver to stop the speeding Ford F-350. The post-PIT maneuver was not successful and the chase ended when the F-350 crashed into a median. Law enforcement apprehended Ms. McCandless a few yards from the F-350 as she was attempting to flee. Officers determined she was the driver of the F-350, and charged Ms. McCandless with possession of a stolen vehicle, attempting to elude, failure to remain at the scene of a collision, and obstruction of justice. After a jury trial, Ms. McCandless was acquitted of the possession of stolen vehicle charge but convicted on the other three charges as well as a special allegation of endangerment by eluding.

Ms. McCandless appeals, arguing: (i) insufficient evidence existed to support the convictions for attempt to elude or failure to remain at the scene; (ii) the court erroneously admitted hearsay evidence; (iii) the failure to remain at the scene statute should not apply to her conduct; (iv) the convictions for attempting to elude and obstruction of justice should have merged; and (v) the court erred in calculating her credit for time served. In a consolidated personal restraint petition, Ms. McCandless contends she has not received credit for her "good time".

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3) **No.: 356108**

Case Name: Crown West Realty, LLC v. Pollution Control Hearings Board, et al.

County: Spokane

Case Summary: In 1942 the United States Navy established a supply depot on land now known as the Spokane Business and Industrial Park (industrial park) located in Spokane Valley. At that time, the Navy drilled three wells to supply the depot with water. The Navy subsequently sold the property to the industrial park corporation, which transformed the supply depot into a business and industrial park. In 1970, the industrial park corporation filed three groundwater rights claims for the wells originally drilled by the navy, claiming a priority in the rights as of December 1942. That same year, the industrial park corporation applied to the Department of Ecology (Department) for three water certificates to append to the three claims allegedly perfected in 1942. The industrial park corporation also obtained a permit to drill a fourth well and received a certificate for this groundwater right. As of 1976, the industrial park corporation held water rights claims, certificates, or permits totaling an annual quantity of 9,274 acre feet per year (AFY).

Sometime thereafter the industrial park corporation transferred the park and its appurtenant water rights to Appellant Crown West Realty, LLC (Crown West), which continued to develop the industrial park. In March 2016, Crown West filed four applications with the Chelan County Water Conservancy Board (Conservancy Board) to alter the nature of its four water rights claims and transfer a portion of its AFY allotment under its claims to the state water rights trust program, while allowing current use of the water rights at the park unabated.

Each of Crown West's applications for changes to the Conservancy Board sought to: (1) have the water rights documented as being for municipal water supply purposes, (2) change the purposes of use authorized to add instream flows, mitigation of out-of-stream uses, and landscape irrigation, (3) add points of withdrawal, in this instance well locations for each water right, to enable all of the rights to be exercised by using any of the four existing wells at the Park, and (4) authorize the temporary donation of 5,874 AFY of water into the state trust water program for instream flows and mitigation of new out-of-stream use, in areas outside of the location of the park.

The Conservancy Board reviewed the use of water at the industrial park, and issued four conditional decisions granting Crown West's applications, making tentative determinations upholding the validity of the water rights and eligibility for change to the full extent requested and specified on the water rights documents.

The Department reviewed the Conservancy Board's findings, and in September 2016 the Department reversed the Conservancy Board's decision and denied Crown West's change applications on seven enumerated grounds.

Crown West appealed to the Pollution Control Hearings Board, and both parties moved for summary judgment. The Hearings Board granted the Department's motion on two grounds: (1) Crown West failed to demonstrate that its water rights qualified as being

for “municipal water supply purposes” under RCW 90.03.015(4), and (2) because the water rights were not for municipal water supply purposes, they were not exempt from relinquishment and the Conservancy Board erred in determining continued use of the acreage feet of the water rights.

Crown West filed a motion for discretionary review, which this Court granted.

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4) No.: 349187

Case Name: Fireside Bank, fka Fireside Thrift, Co. v. John W. Askins & Lisa D. Askins

County: Whitman

Case Summary: John and Lisa Askins purchased a used car on credit from a car dealer in 2004. The dealer assigned the debt to Fireside Bank fka Fireside Thrift (Fireside), who later assigned the debt to Cavalry Investments, LLC (Cavalry). The Askins paid the debt as agreed for approximately two years, then relinquished possession of the vehicle to Fireside. The Askins subsequently stopped paying the debt and in 2007 Fireside obtained a default judgment. Over the next seven years, Fireside and its successor Cavalry collected money from the Askins through garnishment proceedings. In 2016, the Askins’ counsel requested an accounting of the debt from Cavalry. In response, Cavalry’s counsel sent an email indicating the debt had not been satisfied. Based on the that email and the garnishment proceedings, the Superior Court ordered Cavalry to show cause why the court should not enter the judgment as satisfied. Following a hearing, the court found that Cavalry violated the Collection Agency Act (CAA), ch. 19.16 RCW. The court ordered the 2007 Judgment stripped to the principal amount, found that the Askins had paid off the principal, and entered the Judgment as satisfied. The court denied Cavalry’s request for reconsideration. Cavalry appeals.

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5) **No.: 356655**

Case Name: State of Washington v. Tammie Ann Elliott

County: Asotin

Case Summary: In August 2016, the State charged Tammie Elliot with second degree theft and money laundering based on her alleged involvement in a criminal scam. During her jury trial, the State presented evidence that Joseph and Warlenda McClair received e-mails informing them that an individual in the United Kingdom had left them a large amount of money. The emails instructed the McClairs that in order to receive the inheritance, they needed to send “deposits” to help with the probate. The McClairs sent money orders to Ms. Elliot, who cashed them in Clarkston, Washington, and then sent the money to a friend in Africa. The State called multiple law enforcement officers to testify about the scam involving the McClairs, as well as Ms. Elliot’s involvement in four similar scams that occurred in 2010, 2011, and 2012. The jury found Ms. Elliot guilty as charged.

Ms. Elliot appeals, claiming four of the officers’ testimony constituted impermissible opinion testimony. Alternatively, she contends trial counsel provided ineffective assistance by failing to object to the hearsay testimony.

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6) **No.: 355284**

Case Name: Global Neighborhood, et al v. Respect Washington, et al

County: Spokane

Case Summary: Appellant Respect Washington (“Respect”) proposed a petition to change the Spokane Police Department’s policy prohibiting officers from using citizenship status as a factor in deciding to question or initiate contact with someone. The proposed petition also sought to repeal another section of the municipal code dealing with immigrant status information and to enact a new section addressing respect for the law and cooperation with federal law enforcement authorities. By February 2016, Respect’s proposed petition gained the requisite amount of signatures to be placed on the November 2017 ballot as Proposition 1. In March 2017, a year after Proposition 1 was placed on the ballot, the City Council repealed the code sections Proposition 1 sought to change, and moved similar but more expansive versions of these laws to a new Title within the Spokane Municipal Code. At that time, the Respondents filed suit to challenge the

validity of Proposition 1. The superior court found Proposition 1 to be moot and invalid as exceeding the scope of initiative power, and ordered that Proposition 1 be removed from the ballot. Respect appeals.

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PANEL CHANGE

Panel: Kevin Korsmo, Laurel Siddoway, Rebecca Pennell

7) No.: 352005

Case Name: In re the Marriage of: Barbara Dannenbring & Scott D. Dannenbring

County: Spokane

Case Summary: Barbara and Scott Dannenbring’s 29-year marriage was dissolved in January 2009. The superior court ordered Mr. Dannenbring to pay monthly maintenance of \$3,500 for the first 30 months following the divorce, and then monthly payments of \$1,000 for an additional 30 months. After the first 30 months had passed, Ms. Dannenbring requested a modification. The superior court found that Ms. Dannenbring had not increased her salary as much as it had anticipated at the time of dissolution, and entered a modification ordering Mr. Dannenbring to pay monthly maintenance of \$2,500 for the remaining 30 months. Mr. Dannenbring appealed and this Court upheld the modification.

In 2015, Ms. Dannenbring filed another modification petition. Mr. Dannenbring moved to dismiss, claiming the petition was time-barred because it was filed after the expiration of the maintenance order. The court denied the motion to dismiss and granted the petition, ordering Mr. Dannenbring to pay maintenance of \$2,000 each month until Ms. Dannenbring’s 68th birthday.

Mr. Dannenbring appeals, claiming (1) the trial court erred when it determined the modification petition was not time-barred, (2) the trial court erred when it determined the modification was supported by a substantial change in circumstances, and (3) six of the trial court’s findings of fact are not supported by substantial evidence and three conclusions of law are in error.

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