



## Case Law Updates | Oct. 16 – Nov. 5, 2024

### *Washington Supreme Court*

**POST-CONVICTION/PRPS:** The newly discovered evidence exception to the one-year time bar for collateral attack in RCW 10.73.100(1) applies to sentencing evidence as well as trial evidence.

**COLLATERAL ATTACK:** For new scientific developments or social science research, the objective point for measuring the start of the one-year time bar and the exercise of reasonable diligence is when the development became generally known and accepted in the legal community.

***In re Frazier*, \_\_\_ Wn.2d \_\_\_ (No 102,295-6) (Oct. 31, 2024)**

Frazier was convicted in 1989 for arson and murder committed when Frazier was 18 years old, receiving a 600-month exceptional sentence above the range. In 2018, Frazier filed a CrR 7.8 motion for collateral relief, arguing that the exception to the one-year time limit for newly discovered evidence applied to his case, relying on new evidence of adolescent neurodevelopment. **HELD:** The newly discovered evidence exception to the one-year time limit for collateral attacks applies to sentencing as well as trial, however Mr. Frazier failed to meet the requirements for collateral attack. When a petitioner invokes RCW 10.73.100(1) based on new scientific developments or social science research, the objective starting point for measuring reasonable diligence is the point at which the new scientific development became generally known and accepted in the legal community. To determine whether a petitioner acted with reasonable diligence, the court must consider both the petitioner's circumstances and behavior. Frazier provided evidence of his circumstances but not his behavior. The court had no information on whether Frazier acted with reasonable diligence because it knew nothing about his actions such as how he discovered the case law cited in his original CrR 7.8 motion, if he diligently attempted to conduct legal research but encountered delays due to institutional policies, disability, or other hardships, if Frazier sought assistance in interpreting relevant case law or drafting his CrR 7.8 motion, or how long he was working on his CrR 7.8 motion before it was filed. Absent such information, the court could not find that Frazier met his burden to show that he acted with reasonable diligence.

**SEARCH/SEIZURE:** The state attenuation doctrine does not allow police to apply for warrant using tainted evidence from prior illegal search or seizure unless an

**unforeseeable intervening event provides a new legal basis upon which to conduct a second search or seizure.**

**State v. McGee, \_\_\_ Wn.2d \_\_\_ (No 102,134-8) (Oct. 24, 2024)**

McGee was the driver of a car illegally stopped after police observed the passenger, get in the car and then get out a block later, handling a small object. During the stop police obtained McGee's identity, phone number, drugs, and items associated with the sale of drugs. The passenger who claimed McGee had sold him drugs was found murdered the next day. The homicide investigation involved different officers, who obtained the victim's phone number from his SIM card. Police ran the victim's phone number through their database for known associates, which turned up the earlier police report from involving McGee and the victim. Police used McGee's number obtained from the illegal stop to support a series of increasingly intrusive warrants, culminating in the arrest of McGee for murder and the VUCSA. The VUCSA was dismissed based on the illegal stop following a 3.6 hearing. McGee also moved to suppress his phone number and all evidence that flowed from it in the murder case under state constitution exclusionary rule. The trial court ruled that the dismissal of VUCSA remedied the privacy violation of the illegal stop, and that attenuation or an independent source of other evidence established probable cause. Under Article I, section 7 of the Washington State Constitution, Washington courts have developed a rigorous exclusionary rule to prevent the use of evidence obtained in violation of privacy rights with the only exceptions to the state exclusionary rule being the independent source doctrine and the attenuation doctrine. The Washington attenuation doctrine requires an unforeseeable intervening event that breaks the causal chain between the police misconduct and the discovery of evidence sought to be admitted, such that the evidence is deemed the "fruit" of the superseding cause and not of the illegality. The state argued that the new crime was an attenuating or superseding event, and that such event may occur between the unlawful police conduct and the prosecution's use of the tainted evidence. The state also argued the police would have discovered McGee's identity and connection to the victim notwithstanding the violation of McGee's constitutional rights in the illegal search and seizure. **HELD:** The attenuation doctrine requires the curative event to occur between the misconduct and the discovery of the evidence to be used, not after. A new crime occurring after the seizure of the tainted evidence is not a superseding event--it only provided a new reason to make the illegally obtained evidence useful. Attenuation also does not allow for speculation about what would have been discovered as there is no inevitable discovery exception. The state exclusionary rule is incompatible with any exception that would allow the State to benefit from illegally obtained evidence. Conviction vacated and case remanded.

**FAMILY DEFENSE/DEPENDENCY: Determination of services following an agreed dependency is part of a disposition hearing and the rules of evidence do not apply.**

**In re Dependency of E.M. \_\_\_ Wn.2d \_\_\_ (No 103129-7) (Oct. 17, 2024)**

Father stipulated to a dependency but opposed the Department's request that he obtain a domestic violence (DV) assessment and follow recommendations. Following a contested disposition hearing on the issue, the court followed the Department's recommendations. Father appealed arguing that the court's decision relied upon hearsay evidence. The Court

of Appeals agreed with Father's arguments that hearsay statements should have been excluded but held the findings of fact of the agreed dependency order were sufficient to support the order for the domestic violence assessment. Father appealed to the Supreme Court on discretionary review. **HELD:** The trial court did not err in considering hearsay statements at the hearing on domestic violence services. RCW 13.34.110(3)(c)(i) provides if a parent agrees to an order of dependency, the court must establish on the record that the parent understands their "responsibility to participate in remedial services as provided in any disposition order." A trial court's determination of services is part of the disposition hearing, at which the rules of evidence do not apply.

### ***Washington Court of Appeals***

***BLAKE/LFO: Trial court did not err when it denied the defendant's CrR 7.8 motion for reimbursement for community service hours performed on a drug possession case in lieu of legal financial obligations.***

**[State v. Nelson](#), \_\_\_ Wn.App.2d \_\_\_, No. 58161-2, consolidated with 58165-5, Div. II (Oct. 29, 2024)**

In 1995 and 1998, Nelson pleaded guilty to charges of unlawful possession of a controlled substance with legal financial obligations imposed in each case. Nelson paid some of the legal financial obligations and performed community service in lieu of paying some part of the legal financial obligations. Following *Blake*, Nelson moved to vacate the convictions and sought reimbursement for the legal financial obligations she paid as well as for her community service hours performed in lieu of legal financial obligations. The court ordered Nelson be reimbursed for cash payments but not for community service performed in lieu of legal financial obligations. **HELD:** The trial court did not err when it denied reimbursement for community service hours performed in lieu of legal financial obligations. There is no substantive due process or equal protection right to monetary compensation for community service work performed in lieu of payments for legal financial obligations.