



## Case Law Updates | Nov. 20-Dec. 3, 2024

### ***WASHINGTON SUPREME COURT***

**DANGEROUS DOG FORFEITURE/STATUTORY INTERPRETATION:** Courts of limited jurisdiction lack statutory authority to order criminal forfeiture of a dog as a condition of sentence following a criminal conviction for having a dangerous dog at large where the statutory prerequisites for forfeiture of an animal have not been met.

**PROPERTY INTEREST/DOG:** A dog is nonfungible personal property in which the owner has a valid legal ownership interest, and to forcibly deprive the owner of the dog would constitute a forfeiture.

[State v. Richards](#), \_\_\_ Wn.2d \_\_\_, No. 102,627-7, Nov. 21, 2024

Richards was convicted of having a dangerous dog at large after Richard had left her dog unsecured on her porch while running an errand after it had been declared a dangerous dog. Richards was ordered to serve 364-day sentence, but the sentence would be suspended if Richards surrendered her dog to the humane society to be euthanized. At the Court of Appeals the court found that the prerequisites for destruction of a dog by state and county ordinance were not met and the dog was not subject to destruction. The county claimed that the district court had essentially boundless power at sentencing, while Richards argued that the district court was required to follow its procedural grant of authority, and had no statutory power to order Richards to surrender her dog. **HELD:** The district court exceeded its authority in ordering the surrender of the dog as an alternative to confinement. The district court's order to surrender the dog constituted a criminal forfeiture because it deprived Richards of specific, nonfungible personal property. Courts of limited jurisdiction may only operate under statutory authority and statutory authority for criminal forfeiture as a condition of sentence has not been granted to courts of limited jurisdiction by the legislature.

### ***WASHINGTON COURT OF APPEALS***

**JURY SELECTION/GR 37/GENDER IDENTITY:** Gender identity alone is a facially invalid basis for a GR 37 objection bereft of any connection between the juror's gender identity and views on race or ethnicity as the purpose of GR 37 is to eliminate the unfair exclusion of jurors based on race or ethnicity.

[State v. Hogan](#), \_\_\_ Wn.App.2d \_\_\_, No. 84796-1, Div. I (Dec. 2, 2024) (published in part)

Defense raised a GR 37 objection based upon the appearance of a juror whom they believed was transgender following the State's use of a peremptory challenge to that juror. The juror had reported a strong negative opinion about ongoing police violence against black people and other underrepresented groups. While the jury questionnaire gave jurors the option of preferring not to answer a gender identifying question or selecting a gender identity of male, female, or non-binary, the juror indicated they preferred not to answer. Following the GR 37 challenge, the state argued the defense's belief the juror was transgender was speculative, and argued the peremptory strike was based on the individual's seeming inability to answer questions comfortably in both the group voir dire and the individual questioning, along with their concern that the individual would be unable to take a stand, make their position known during jury deliberations, and to communicate with the jury during deliberations. During discussions regarding the GR 37 challenge there was no mention of race or ethnicity, and no argument was made regarding how the juror's purported gender identity was related to any issue touching on race or ethnicity or tying their gender identity to their views on racial and ethnic justice issues. The court denied the GR 37 challenge by defense. **HELD:** Gender identity alone is a facially invalid basis for a GR 37 objection where no connection is made between the gender identity and race and ethnicity, or the juror's views on race and ethnicity. The purpose of GR 37 is to eliminate the unfair exclusion of jurors based on race or ethnicity. The challenge also fails under a *Batson* analysis as gender does not use the objective observer test and the State provided gender neutral reasons for the peremptory strike of the juror.

**AGREED EXCEPTIONAL SENTENCE: Trial court did not err when it imposed a sentence above a jointly recommended plea agreement where the defendant stipulated an exceptional sentence upward served the interest of justice.**

[State v. Lone](#), \_\_\_ Wn.App.2d \_\_\_, No. 39616-9, Div. III (Nov. 27, 2024) (published in part)

The State prosecuted Lone for five counts of felony theft and alleged two aggravating circumstances. Following plea negotiations, Lone entered into a plea agreement that included a stipulation to an exceptional sentence above the range in the interests of justice, with a joint sentence recommendation for 36 months. The court accepted the plea but went above the joint recommendation, imposing a sentence of 92 months. Lone appealed, arguing the plea agreement created a cap on how far above the range the trial court could go at sentencing. **HELD:** The trial court did not abuse its discretion when it went above the jointly recommended sentence where the defendant stipulated that an exceptional sentence above the range served the interest of justice.

**SUFFICIENCY/RENDERING CRIMINAL ASSISTANCE: Accomplice liability describes actions a person takes preceding the crime, while actions occurring to help the offender after the crime is committed is rendering criminal assistance.**

[State v. Hanley](#), \_\_\_ Wn.App.2d \_\_\_, No. 39216-3, Div. III (Nov. 27, 2024)

A jury convicted Hanley of being an accomplice to Parsley's crimes of second-degree burglary and third degree. Surveillance evidence showed that Hanley allowed Parsley to drive her vehicle to a remote and unoccupied property where Hanley remained in the vehicle while Parsley went to the back door and knocked on and looked through a window. Parsley then disappeared off-camera, returning sometime later with a green coat later determined to be a WWII uniform which Parsley took from a barn, as documented by another security video. No evidence was presented at trial that Hanley knew in advance that Parsley intended to take any object from the property. Five hours later the property owner was notified of additional activity via the security cameras and police located Parsley at the property. Parsley had a different vehicle, and was in possession of the stolen WWII uniform, security cameras that had been removed from the property, and controlled substances. Neither Hanley nor Hanley's car were present. Following conviction Hanley argued on appeal that she gave no assistance to Parsley and there was insufficient evidence to convict her of accomplice liability. The state argued that Hanley knew Parsley was stealing the uniform before the crime was completed when Parsley brought it to the car and knew that Hanley's car was needed to assist Parsley. **HELD:** There was insufficient evidence to convict Hanley of accomplice liability. The State misunderstood the difference between accomplice liability and rendering criminal assistance. Accomplice liability describes actions a person takes preceding the crime, while actions helping the offender after the crime is committed is rendering criminal assistance. Mere presence with knowledge of criminal activity does not support a finding of accomplice liability. Parsley entered the barn with the intent to steal which completed the crime of burglary second degree. Parsley completed the crime of theft when she removed the military coat from its hook in the barn, thereby exercising unauthorized control over the item. There is no evidence that Hanley helped or encouraged Parsley to commit the crimes or took any action prior to the completed crimes. Convictions vacated and remanded for dismissal.

**FIREARM RIGHTS RESTORATION: A sealed juvenile class A felony conviction still counts as a prior conviction that disqualifies a person from restoring their right to possess a firearm under state law.**

[State v. Clary](#), \_\_\_ Wn.App.2d \_\_\_, No. 85961-7, Div. I (Dec. 2, 2024)

In June 2007, a court convicted Clary, then a juvenile, of a class A felony. The court also revoked his right to possess firearms. In 2018, the court sealed his juvenile court file in an order entered pursuant to RCW 13.50.260. In 2023, Mr. Clary petitioned the trial court to restore his right to possess a firearm under state law. The court denied his petition because he was previously convicted of the Class A disqualifying offense, despite the sealing order. **HELD:** While the sealing order made Clary's Class A conviction invisible to most people, the conviction itself does still exist as a matter of state law. Clary remains a person who has been convicted of a class A felony and his prior conviction disqualifies him from petitioning for restoration of his firearm rights under state law.

**GUARDIANSHIP: Court is not required to appoint parent's nominated guardian for child even where the nominated guardian was capable of providing adequate care as the court is also required to determine the best interest of the child.**

[In the Matter of Guardianship of F.S.](#), \_\_\_ Wn.App.2d \_\_\_, No. , Div. II (Nov. 20, 2024) Petitioner Campbell had been informally caring for three-year old F.S. for approximately 18 months after agreeing to DCYF's request to place the F.S. with Campbell. Later, following the birth of a second child, the Mother agreed to a guardianship of that second child with Morales, the child's paternal aunt. When the mother decided to leave the state, Campbell sought limited guardianship of F.S., while the mother nominated Morales, the younger child's aunt and guardian, as guardian for F.S.. DCYF preferred Campbell as guardian for F.S. over Morales. Mother argued that Campbell was not an appropriate guardian for F.S. because Campbell was not related to F.S. and did not have a long-term connection with F.S.. Mother also argued that Campbell was not as committed to maintaining a relationship between Mother and F.S. as her younger child's guardian would be, and that placement of F.S. with the younger child's aunt/guardian would allow the children to be raised together and develop a sibling relationship. Despite finding that Morales had relevant training, education, and experience in child development, and that Morales had a substantial support network and access to resources necessary to address the challenges that might occur if the child was transitioned to her family, and holding that the Court had no concerns about Morales's ability to care for the child, the court found that that placement of F.S. with Morales was contrary to the F.S.'s best interest. The court based its decision in part because the child had bonded with Campbell and removing the child from Campbell's care would result in significant trauma to the child. On appeal Mother argued that the trial court misapplied the decision-making framework for minor guardianship decisions under RCW 11.130.215(2)(a) by not honoring her guardianship preference after determining that it had no concerns about Morales's ability to care for F.S. and the court's finding that appointing Morales as limited guardian was contrary to F.S.'s best interest was an abuse of discretion. **HELD:** The court properly applied RCW 11.130.215(2)(a). The best interests of the child standard referenced in the statute can usurp the statutory preference for a parent's nominated guardian, even where the parent's preference is an appropriate caregiver for the child. The court may rely upon its own determination that the harm of removing the child from the current nonparent to find that guardianship with the parent's nominated guardian is contrary to the child's best interests. Whether a nominated guardian is capable of providing adequate care and whether placing that child with the proposed guardian is contrary to the child's best interest are two distinct determinations. The superior court must be allowed to consider all the facts and circumstances in determining the best interest of the child. Whether the nominated guardian can adequately care for the child is a relevant factor, but it cannot be the only factor as the court must consider that the child already had an established relationship with the petitioner, and the impact of removing the child from her care is relevant as to whether placement with the appropriate nominated guardian would be contrary to the child's best interest.