



## Case Law Updates | Jan. 8- 21, 2025

### ***Washington Supreme Court***

**COURT OF APPEALS/JUDGES: Judge cannot sit on appellate panel that reviews their trial level decision.**

[State v. J.M.H.](#), \_\_\_ Wn.2d \_\_\_, No. (Jan. 16, 2025)

J.M.H. pleaded guilty to disorderly conduct in juvenile court in 2022. The trial court judge entered a disposition order that required J.M.H. to comply with certain conditions. J.M.H. violated those conditions, and the trial court judge issued a warrant for her arrest. J.M.H.'s lawyer challenged the issuance of the warrant on the ground that it failed to comply with JuCR 7.16, the court rule governing issuance of warrants for children. The trial court denied that motion, and J.M.H.'s lawyer filed a notice of appeal. By the time the appeal was considered, the trial court judge had been appointed to the Court of Appeals. He ended up sitting on the three-judge panel that reviewed his own decision to issue the warrant in the first place.

*Held*, A judge cannot review the appeal of a decision that the same judge made when sitting as a trial court judge in the same case.

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

**Wrongfully Convicted Persons Act (WCPA): Trial court did not err when it denied a claim for compensation where the victim of a child molestation case credibly recanted.**

[State v. Brock](#), \_\_\_ Wn.App.2d \_\_\_, No. 86617-6, Div. III (Jan. 13, 2025)

After a jury convicted Defendant Brock of child molestation in 1995, the trial court sentenced him to LWOP as a persistent offender. In 2012, R.R., the victim, recanted her testimony and provided a declaration that she falsely accused Brock. In 2014, the trial court granted a motion for a new trial, and the State dismissed the case. Brock filed a claim for compensation under the Wrongfully Convicted Persons Act (WCPA), and the case went to trial in 2022. The trial judge found both R.R.'s original report/testimony and the recantation credible and denied his claim for compensation. *Held*, trial court did not err in determining that Brock failed to prove actual innocence by clear and convincing evidence. *Held*, the trial court did not err by failing to give due consideration to the difficulties of proof not caused by Brock. *Held*, trial court did not err by imposing an impossible legal burden contrary to the purpose of the WCPA.

**DUI/LICENSE SUSPENSION/BLOOD TEST: Blood test complied with all criteria for admission as designated by the state toxicologist and the administrative code even though the blood was stored in an expired vial.**

[Kanta v. DOL](#), \_\_\_ Wn.App.2d \_\_\_, No. 58434-4, Div. II (filed unpublished Oct. 1, 2024, published Jan. 14, 2025)

Following her arrest in July 2021 for driving under the influence, Defendant Kanta's blood was drawn, but it was not tested until May 2022, after the tubes used to store it expired in November 2021. The Department of Licensing suspended Kanta's driver's license following receipt of the test results, which showed her blood alcohol level was above the legal limit.

At a hearing, Kanta's challenged the suspension on the basis that the blood was not properly preserved and therefore did not comply with the Washington Administrative Code (WAC). Kanta presented a declaration from a representative of BD Diagnostics, the test tube manufacturer. The declaration stated that the manufacturer did not make any representation regarding use of the tubes post expiration date, that BD could not guarantee the function or efficacy of the tubes after the expiration date, that specific lab testing and/or expert analysis would be necessary to determine the efficacy of the tubes post-expiration, and that the tubes' expiration date alone likely cannot be the only factor to their efficacy. The hearing examiner held that that the facts did not show the blood test result was compromised and declined to rescind the license suspension. The appellate court noted that RCW 46.61.506(3) authorizes the state toxicologist to approve methods for testing of blood and breath, and the testing methods approved by the state toxicologist are set forth in WAC 448-14-020. The specific language of WAC 448-14-020(3) only requires the use of a chemically dry container with an inert leak-proof stopper and that the samples be preserved with an anticoagulant and enzyme poison in sufficient amounts. Nothing in the rules requires that the storage vials comply with all manufacturer statements regarding the equipment used to collect and store blood evidence, thus the expiration of the vials did not require exclusion the blood test results.

The Court also concluded that the State presented prima facie proof that the test chemicals and the blood sample were free from any adulteration that could introduce error to the test results. The court based this conclusion on testimony from the Washington State Patrol toxicologist that he had identified the chemicals in the vials as potassium oxalate and sodium fluoride, that the labels on the vials indicated that they contained these chemicals, and that without the presence of those chemicals, the blood test would not detect alcohol. The toxicologist also testified that the samples were not clotted and alcohol was detected in the samples. The department also submitted a certificate of compliance that established that the tubes used to store Kanta's blood

sample met the necessary requirements for preservatives and anticoagulants. **HELD:** The blood test complied with all criteria for admission as designated by the state toxicologist and the administrative code, and therefore the hearing examiner did not err in admitting the test.

**FELONY HARASSMENT: Officers who saw the defendant threaten his child were victims of harassment.**

**NOTE: Court of Appeals used authority that no longer exists to reach its holding.**

[State v. Johal](#), \_\_\_ Wn.App.2d \_\_\_, No. 58980-0, Div. II (Jan. 14, 2025)

Defendant Johal was charged with harassment and threat to kill for threats to hurt his 6-week-old child with a hammer and to toss her off a balcony, which he made in front of police. The State charged multiple counts of harassment, alleging both the child and police officers as victims despite no threat of harm to the officers.

The defense argued there was insufficient evidence that the child had a reasonable fear or that officers were threatened with bodily harm. The trial court ruled the officers were reasonably fearful of the threat to the child. The Appellate Court affirmed, citing dicta from *State v. J.M.*, in which the Supreme Court suggested the threat of harm to a child communicated to their parent might make the parent a victim of the harassment. The Court also cited *State v. Morales* and the statutory definition of harassment it contained. **Holding:** The officers were victims of coercion and intimidation under RCW 9A.46.020(1)(a) because Johal had threatened the child in front of them. Any witness can be a victim of harassment in similar circumstances.

**NOTE: There are at least two flaws in the Court of Appeals' reasoning. First, the court relied on examples in *J.M.* and *Morales* even though they were hypothetical and specific to a parent-child relationship. Second, the court relied on an outdated statutory definition used in *Morales*. *Morales* referenced RCW 9A.46.020(1)(a), stating it defines a harassment victim as someone who is the target of coercion, intimidation or humiliation. This is not the current statute, which now addresses knowledge, not a definition.**