



Law Enforcement

FEBRUARY 2015

Digest

Law enforcement officers: Thank you for your service, protection and sacrifice.

HONOR ROLL

707th Basic Law Enforcement Academy – September 3, 2014 through January 14, 2015

Best Overall:	Benjamin T. Corning, Klickitat SO
Best Academic:	Benjamin T. Corning, Klickitat SO
Patrol Partner Award:	Erik W. Young, Island SO
Tac Officer:	Russ Hicks, Fife PD

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An officer contacted a driver and observed signs of intoxication. The officer read the driver implied consent warnings, including the right to have independent tests, and asked the driver to submit to a breath alcohol test. The driver refused. The officer then obtained a search warrant for the driver's blood. The blood was drawn without another advisement of the driver's right to independent testing.

The prosecutor charged the driver with felony driving under the influence (DUI). Before trial, the driver moved to suppress the blood test results because, after the officer obtained a search warrant, the officer did not tell him again about the right to additional tests. The trial court denied the motion and the driver was convicted of felony DUI.

On appeal, the driver argued that the trial court erred by admitting evidence from the blood test authorized by the search warrant because the officer did not provide another advisement of the driver's right to an independent test. The Court of Appeals, Division Three, rejected this argument.

The Court of Appeals held "that once the officer obtained a search warrant for a blood test independent of the RCW 46.20.308(3) [the mandatory blood draw statute for persons suspected of felony DUI], he was not required to re-advise [the driver] of his right to additional tests." The Court of Appeals reasoned that since the officer had already advised the driver of the right to independent tests, the driver knew he had the right to independent testing that might yield exculpatory evidence. Additionally, a search warrant, not the mandatory blood test statute (RCW 46.20.308(3)), authorized the blood draw.

LED EDITORIAL NOTE: While an officer is not required to advise a suspect of the right to additional tests when obtaining a blood sample pursuant to a warrant, it is prudent to advise the suspect of the right to additional tests when obtaining a blood sample pursuant to the suspect's consent or under exigent circumstances.

WHEN INVESTIGATING A DOMESTIC VIOLENCE CALL, EXIGENT CIRCUMSTANCES JUSTIFIED THE OFFICERS' ENTRY INTO AN APARTMENT AND WARRANTLESS SEIZURE OF PERSON INSIDE THE APARTMENT State v. Rubio, __ Wn. App. __, __ P.3d __, 2015 WL 1154832 (January 8, 2015).

The Court of Appeals, Division III, described the facts as:

[Police officers] responded to a domestic disturbance call A 911 caller reported that a male and a female were arguing and that the female was outside yelling about having a miscarriage and holding her stomach. The fighting was physical. A male was seen jumping off of the third floor apartment balcony.

Upon arriving, [the officers] did not find anyone outside the apartment, but heard people moving inside the apartment. The officers knocked on the door, identified themselves, and stated that they needed to check on the welfare of the people inside. No one answered. [The officer] obtained a key to the apartment and opened the door to conduct a welfare check. The officers called out to the occupants to come outside. Other occupants exited the apartment, but Mr. Rubio did not. He remained in the apartment on a couch. [The officer] contacted Mr. Rubio to check on his welfare and to find out what happened. [The officer] requested identification from Mr. Rubio. Mr. Rubio gave a name, which dispatch identified as an alias for Mr. Rubio. There were three warrants for Mr. Rubio's arrest.

[The officer] arrested Mr. Rubio on outstanding warrants and transported him to the Spokane County detention facilities. [During the booking process, a corrections officer found methamphetamine in Mr. Rubio's sock]. Mr. Rubio was charged with possession of a controlled substance, methamphetamine.

Before trial, Mr. Rubio moved to suppress the evidence by claiming that the officer unlawfully seized him in the apartment. The trial court denied the motion. Mr. Rubio was then convicted of possession of a controlled substance. On appeal, Mr. Rubio argued "that he was unlawfully seized by the arresting officer." The Court of Appeals disagreed.

Under exigent circumstances, an officer may detain a person "when (1) the officer has reasonable cause to believe that a misdemeanor or felony involving danger or forcible injury to persons has just been committed near the place where he finds such person, (2) the officer has reasonable cause to believe that such person has knowledge of materials that aid in the investigation of such crime, and (3) such action is reasonably necessary to obtain or verify the identification of such person, or to obtain an account of such crime."

Under this standard, the Court of Appeals found that the officer lawfully detained Mr. Rubio in the apartment. The Court of Appeals reasoned: (1) the officer "had reasonable cause to believe that a crime was just committed [at the apartment] involving injury to a person;" (2) the officer "had reasonable cause to believe that each person who was in the apartment, including Mr. Rubio, had knowledge which would aid in the investigation of the crime;" and (3) the officer's "request for identification [and subsequent warrant check were] necessary to determine the true identity of Mr. Rubio."

The Law Enforcement Digest (LED) is edited by Assistant Attorney General Shelley Williams of the Washington Attorney General's Office. Questions and comments regarding the content of the LED are welcome and should be directed to Ms. Williams at ShelleyW1@atg.wa.gov. LED editorial commentary and analysis of statutes and court decisions express the thinking of the editor and do not necessarily reflect the views of the Office of the Attorney General or the CJTC. The LED is published as a research source only. The LED does not purport to furnish legal advice. LEDs from January 1992 forward are available via a link on the CJTC Home Page [<https://fortress.wa.gov/cjtc/www/led/ledpage.html>]
