JULY 2019

LAW ENFORCEMENT DIGEST

CRIMINAL JUSTICE TRAINING COMMISSION
WASHINGTON

LAW ENFORCEMENT ONLINE TRAINING DIGEST

Welcome to the July 2019 **Law Enforcement Digest Online Training**! This LED continues the transition to an online training resource created with the Washington law enforcement officer in mind. Select court rulings from the month of the edition (ex – this July training covers the cases issued in July 2019) are summarized briefly, arranged by topic, with emphasis placed on the practical application of legal changes to law enforcement practices.

Each cited case includes a hyperlinked title for those who wish to read the court's full opinion, as well as references to select RCWs. Links to additional Washington State prosecutor and law enforcement case law reviews and references are also included.

The materials contained in this document are for training purposes. All officers should consult their department legal advisor for guidance and policy as it relates to their particular agency.

CRIMINAL JUSTICE TRAINING COMMISSION
WASHINGTON

LAW ENFORCEMENT ONLINE TRAINING DIGEST

July 2019 EDITION

Covering select case opinions issued in July 2019

1. **ROBBERY**
2. **SEARCH WARRANTS; CELL-SITE LOCATION INFORMATION**
3. **SEARCH WARRANTS; DIGITAL EVIDENCE; CHILD PORNOGRAPHY**
4. **FAILURE TO REGISTER AS A SEX OFFENDER; TRANSIENT RSO**
5. **VEHICULAR HOMICIDE; PROXIMATE CAUSE; SUPERCEDING CAUSE**
6. **COMMUNITY CARETAKING; DRUGS; SEARCH AND SEIZURE**
7. **SEARCH AND SEIZURE; FIREARM SEIZURE; MENTAL HEALTH; COMMUNITY CARETAKING**
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CRIMINAL JUSTICE TRAINING COMMISSION
WASHINGTON

1 ROBBERY

State v. Earl Ray Phillips
COA No. 77562-6-I (Jul. 1, 2019)
Court Of Appeals, Division I

FACTS:

Grocery store manager sees the defendant take a case of beer from the fridge and attempt to leave the store without paying. The manager follows as the man attempts to leave the store and grabs the case of beer. The man tries to hit the manager but misses when the manager ducks the punch. Another store employee attempted to assist the manager in his struggle with the man. The man insisted that he had paid for the beer, and refused the offer to merely put it down and leave the store. A customer assisting in restraining the man while police were called also sustained a significant bite to his bicep.

The man now appeals his conviction for Robbery in the 2nd Degree.

1 ROBBERY

State v. Earl Ray Phillips
COA No. 77562-6-I (Jul. 1, 2019)
Court Of Appeals, Division I

TRAINING TAKEAWAY: Robbery in the 2nd Degree – Elements of the Crime

The use of force element of Robbery in the 2nd Degree doesn't have to occur during the suspect's taking of the property – it may also occur during an attempt to retain property already taken, or in an attempt to impede the rightful owner's efforts to retrieve the property, up to the point the suspect has effected an escape.

Robbery, RCW 9A.56.190
Robbery in the 2nd Degree, RCW 9A.56.210

1 ROBBERY

State v. Earl Ray Phillips
COA No. 77562-6-I (Jul. 1, 2019)
Court Of Appeals, Division I

TRAINING TAKEAWAY: Robbery in the 2nd Degree – Elements of the Crime

The defendant used force (attempting to strike the store manager and later biting the customer attempting to restrain him) after he had taken the beer, but clearly during the period of time in which he was attempting to retain the stolen goods and to flee the store. These actions satisfied the elements for Robbery in the 2nd Degree.

This appeal centered on whether the prosecutor's filed charge ("Information") was sufficient. The court held that use of force or fear to obtain or retain possession of the property at issue in a 2nd Degree Robbery case is not an essential element that must be included in the information.

2 SEARCH WARRANTS; CELL-SITE LOCATION INFORMATION

State v. Phillip Jr.
COA No. 77175-2-I (Jul. 1, 2019)
Court of Appeals, Division I

FACTS:

Victim is found dead in his Auburn home by a neighbor who was asked to check on him after victim's girlfriend hadn't heard from him for a couple of days during which she was in Portland, OR for work. During the investigation, the girlfriend gave consent for police to search her cell phone. They discovered frequent messages between the victim's girlfriend and a man from Sacramento, CA, as well as "flirtatious" messages between the victim's girlfriend and her former boyfriend living in Portland.

Portland PD contacted the former boyfriend at the request of Auburn PD. The Portland PD officer, without telling the suspect that the victim was dead or that he was investigating a murder, asked the suspect if he knew the victim's girlfriend. The suspect said she was a friend, and when asked if he'd been to Auburn recently, the suspect stopped talking and asked for a lawyer.

2 SEARCH WARRANTS; CELL-SITE LOCATION INFORMATION

State v. Phillip Jr.
COA No. 77175-2-I (Jul. 1, 2019)
Court of Appeals, Division I

FACTS, cont.

Over the course of the 2 month investigation, Auburn PD obtained a total of 5 warrants. The first - a May 2010 warrant - required AT&T to provide the suspect's Cell-Site Location Information. The affidavit described the crime scene, stated that the victim and his girlfriend were in a relationship at the time, and noted that the victim's girlfriend continued to speak to the suspect – her former boyfriend.

In June, Auburn PD visited the suspect's worksite and learned that he frequently used zip ties identical to the ones on the victim's body at the time of the murder in his work. Police then received the CSLI data in response to their May warrant which showed that on the day of the murder, the suspect had traveled from Portland to Auburn and remained there – at times within blocks of the victim's home – until he returned to Portland at approximately 9pm. Officers used this info to obtain a warrant to search the suspect's apartment, vehicle, and person. During that search they seized the suspect's cell phone and journal.

2 SEARCH WARRANTS; CELL-SITE LOCATION INFORMATION

State v. Phillip Jr.
COA No. 77175-2-I (Jul. 1, 2019)
Court of Appeals, Division I

FACTS, cont.

In the suspect's journal he confessed to being obsessed with his former girlfriend/the victim's current girlfriend, and stated that the victim wasn't good enough for her. The suspect's mother told police that he had borrowed her car on the day of the murder, and consented to its search, during which officers found traces of blood on the inside driver's door handle.

In March 2012, the prosecutor assigned to the case asked the Auburn Police to seek a more thorough warrant for the defendant's CSLI records. Although he felt that the original May 2010 warrant was defensible, he believed the affidavit could have included other facts that were known at the time. After presenting a new affidavit that added details about the crime scene and the victim's girlfriend's relationship to the defendant, the court issued a new warrant for the defendant's CSLI records.

2 SEARCH WARRANTS; CELL-SITE LOCATION INFORMATION

State v. Phillip Jr.
COA No. 77175-2-I (Jul. 1, 2019)
Court of Appeals, Division I

FACTS, cont.

The defendant moved to suppress all evidence from the search warrants. The original May 2010 CSLI warrant was held to not be supported by probable cause, but the subsequent March 2012 warrant was and met the requirements of the independent source doctrine.

After an initial hung jury, a second trial resulted in the defendant's conviction for first degree murder. He appealed to the current court, which held that the affidavits used to obtain the May 2010 and March 2012 warrants failed to provide a factual basis from which to infer that evidence of the crime would likely be found in the CSLI records, and reversed his conviction.

The case was then sent back to the trial court, and the State requested issuance of a subpoena duces tecum directed to AT&T in an attempt to get the defendant's CSLI records. They supported this request with the 6 previously filed affidavits. The court granted the subpoena, finding that the defendant had a lower expectation of privacy in the historical CSLI than in his cell phone or apartment. The defendant now seeks discretionary review of the trial court's order that would compel AT&T to release the CSLI records in response to the subpoena.

2 SEARCH WARRANTS; CELL-SITE LOCATION INFORMATION

State v. Phillip Jr.
COA No. 77175-2-I (Jul. 1, 2019)
Court of Appeals, Division I

TRAINING TAKEAWAY: Search Warrants and Cell-Site Location Information (CSLI)

A person has an expectation of privacy in cell-site location information (CSLI) records, and therefore a search warrant, not a subpoena, is required to obtain CSLI records from a wireless carrier.

The need to protect against unconstitutional privacy invasion of the highly detailed and personal information contained in the CSLI requires a warrant, supported by probable cause and meeting the particularity requirement.

When law enforcement first applied for a warrant for the defendant's CSLI, they presented very little evidence to support that the defendant was involved in the victim's murder, or that any relevant evidence would be found in the CSLI. Despite the court ruling that the original warrant and the revised 2012 warrant lacked probable cause, the State provided no new evidence or affidavit when it then attempted to obtain the new-suppressed CSLI records via the subpoena duces tecum.

2 SEARCH WARRANTS; CELL-SITE LOCATION INFORMATION

State v. Phillip Jr.
COA No. 77175-2-I (Jul. 1, 2019)
Court of Appeals, Division I

TRAINING TAKEAWAY: WHAT IS CELL-SITE LOCATION INFORMATION?

- Cell-site location information (CSLI) is highly detailed data that provides a historical map of where a particular cell phone traveled during a set period of time.
- CSLI are usually mounted on a tower, but may also be found on light posts, flagpoles, churches, or the sides of buildings.
- They typically have several directional antennas that divide the covered area into sectors and continuously scan their environment looking for the best signal – which typically comes from the closest cell site.
- Phones tap into the wireless network several times a minute whenever their signal is on, even if the owner isn't using the phone. Each time the phone connects to a cell cite, a time-stamped record (CSLI) is generated.

The Supreme Court has already rule that accessing CSLI data from a wireless carrier invades an individual's reasonable expectation of privacy in his physical movements, and therefore requires the government to secure a warrant in order to compel a carrier to turn over a subscriber's CSLI. Carpenter v. US (2018)

2 SEARCH WARRANTS; CELL-SITE LOCATION INFORMATION

State v. Phillip Jr.
COA No. 77175-2-I (Jul. 1, 2019)
Court of Appeals, Division I

PRACTICE POINTER: Increased Court Scrutiny of Digital Tracking Data

State and federal courts continue to show increasing scrutiny of law enforcement access to and use of cell phone records and tracking data. Technological advancements mean our phones have more and more private information on them, and can potentially provide critical evidence in an investigation. Proceeding with caution and thorough investigation techniques can make the difference between a conviction versus a suppression of all of your evidence. In CSLI, the courts see the magnitude of granting access to law enforcement of what is essentially a 24/7 tracking device of our movements.

While the courts will always be a step behind technology, it's safe to assume that this trend will continue. The best way for law enforcement to ensure that cell phone data and records will be admissible in court is to make writing strong search warrants the default practice with regard to digital evidence, keep up on technology relevant to law enforcement via regular trainings for investigators, and work closely with your prosecutors and legal advisors to develop policies and procedures.

2 SEARCH WARRANTS; CELL-SITE LOCATION INFORMATION

State v. Phillip Jr.
COA No. 77175-2-I (Jul. 1, 2019)
Court of Appeals, Division I

PRACTICE POINTER: Law Enforcement Search Warrant Resource

An excellent starting place for quality search warrant materials is King County's **Search Warrant Resource Center**. The SWRC is a well-organized database that includes templates for every type of warrant, cover letters and contact info for frequently sought business records and technical data, and training materials and tips to strengthen your warrant practice. The database will be regularly updated by skilled prosecutors and investigators to reflect current legal requirements. Definitely worth a bookmark!

Thank you to the King County DPAs and Deputies for the work that went into creating this incredible resource, and the willingness to share it for use by the broader criminal justice community!

3 SEARCH WARRANTS; DIGITAL EVIDENCE; CHILD PORNOGRAPHY

State v. Vance
COA No. 50664-5-II (Jul. 2, 2019)
Court of Appeals, Division II

FACTS:

An FBI Special Agent working undercover in Detroit used a peer to peer file sharing program to download 35 files from a user with an IP address registered to Comcast. 20 of the files appeared to be photos of children engaged in sexually explicit activity. The agent filed an administrative subpoena with Comcast requesting all subscriber information for the user of that IP address. He passed along the name to the Seattle FBI office which obtained and verified the defendant's Vancouver street address and provided the case file and information to the Vancouver PD investigator serving as the local ICAC task force representative with the Clark County Sheriff's Office Digital Evidence Cybercrime Unit.

3 SEARCH WARRANTS; DIGITAL EVIDENCE; CHILD PORNOGRAPHY

State v. Vance
COA No. 50664-5-II (Jul. 2, 2019)
Court of Appeals, Division II

FACTS, cont.:

Using the information provided by the FBI, the investigator obtained and executed a search warrant for the defendant's home to search for "evidence of the crime(s) of RCW 9.68A.050 Dealing in Depictions of a Minor Engaged in Sexually Explicit Conduct and RCW 9.68A.070 Possession of Depictions of a Minor Engaged in Sexually Explicit Conduct." The warrant described the items to be seized, including a list of specific types of electronic devices and media "capable of being used to commit or further the crimes outlined above, or to create, access, or store the types of evidence, contraband, fruits, or instrumentalities of such crimes," and the accompanying records, documents, and information necessary to operate and access those devices and data. The warrant concluded with authorization to transfer and and/or all seized items to the Cybercrime Unit for examination, analysis, and recovery of data. Investigators seized several electronic devices from the defendant's home. The forensic examination yielded at least 20 images and videos depicting minors engaged in sexually explicit conduct. The defendant was ultimately charged with 7 counts of RCW 9.68A.070 (Possession) and 3 counts of RCW 9.68A.050 (Dealing).

3 SEARCH WARRANTS; DIGITAL EVIDENCE; CHILD PORNOGRAPHY

State v. Vance
COA No. 50664-5-II (Jul. 2, 2019)
Court of Appeals, Division II

FACTS, cont.:

In motions, the trial court struck the information in the search warrant that was obtained from the federal agents, leaving the warrant without sufficient probable cause, and resulting in the charges against the defendant being dismissed. The State successfully appealed the dismissal and that ruling was reversed. The case then went to a bench trial where the defendant was convicted of 10 counts of RCW 9.68A.070 (Possession), and sentenced to a standard range sentence of 77 months of confinement. The defendant now appeals the conviction and sentence alleging that the search warrant violated Art 1, Sec. 7 of the Washington Constitution because the warrant wasn't sufficiently particular.

3 SEARCH WARRANTS; DIGITAL EVIDENCE; CHILD PORNOGRAPHY

State v. Vance
COA No. 50664-5-II (Jul. 2, 2019)
Court of Appeals, Division II

TRAINING TAKEAWAY: Sufficiently Particular Search Warrant

A search warrant is sufficiently particular where it provided probable cause to search for evidence of the crime(s) of: RCW 9.68.050 and 9.68A.070 by name; sought computers or devices "capable of being used to commit or further the crimes outlined above, or to create access, or store the types of evidence, contraband, fruits, or instrumentalities of such crimes"; and authorized the Cybercrime Unit to transfer the electronic and related devices and search them for "graphic/image files in common formats . . . pictures, movie files, emails, spreadsheets, databases, word processing documents, Internet history, . . . newsgroup information, . . . encrypted files" and other similar files "that are related to the production, creation, collection, trade, sale, distribution, or retention of files depicting minors engaged in sexually explicit acts/child pornography."

3 SEARCH WARRANTS; DIGITAL EVIDENCE; CHILD PORNOGRAPHY

State v. Vance
COA No. 50664-5-II (Jul. 2, 2019)
Court of Appeals, Division II

TRAINING TAKEAWAY: Search Warrant Particularity

A search warrant must describe with particularity the place to be searched and the persons or things to be seized in order to prevent general and overbroad searches that violate a person's constitutional rights.

- **The warrant's description of the place to be searched and property to be seized should be as specific as the circumstances and the nature of the activity under investigation permit.**
- Where the material to be searched and potentially seized via search warrant is protected by the **First Amendment**, a greater degree of particularity is required.
- Generic or general descriptions of the evidence to be seized may be sufficient if probable cause is shown and a more specific description is impossible given the information law enforcement has at the time of the search warrant application.
- A sufficiently particular description in a warrant provides law enforcement with an objective standard to determine what should be seized.

3 SEARCH WARRANTS; DIGITAL EVIDENCE; CHILD PORNOGRAPHY

State v. Vance
COA No. 50664-5-II (Jul. 2, 2019)
Court of Appeals, Division II

TRAINING TAKEAWAY: Particular versus Overbroad Descriptions

The warrant in this case survived the court's scrutiny because it regularly referred back to the statutory language of the crimes and limited the evidence that officers could seize. The court held that incorporating the statutory language of "possession of depictions of a minor engaged in sexually explicit conduct," created a sufficiently particularized description of the evidence creating a valid search warrant that covered only data and items connected to the crime.

Prior cases in which the search warrants were held to NOT be sufficiently particular:

- Identified the crime as merely "sexual exploitation of a minor" and authorized police to conduct a "physical dump" of "all of the memory of the phone for examination." State v. McKee (LED April 2019)
- Cited the statute without further definition of the terms, and therefore didn't distinguish lawfully possessed materials, such as adult pornography and photographs of minors that did not depict them engaged in sexually explicit acts, from evidence connected to the crime. State v. Besola (2015)
- Used the overbroad term "child pornography" State v. Perrone (1982)

3 SEARCH WARRANTS; DIGITAL EVIDENCE; CHILD PORNOGRAPHY

State v. Vance
COA No. 50664-5-II (Jul. 2, 2019)
Court of Appeals, Division II

PRACTICE POINTER: Cite Statutory Language and Define Terms

Your warrant should define relevant terms and set parameters limiting as clearly as possible the items to be searched and seized to evidence connected to the crime.

Citing to the exact language of the criminal RCW is a start, but still needs additional definitions of the key terms and limits to the categories or items to be seized.

The court makes a point to say that while the language in the search warrant was sufficiently particular, it would have been even stronger had it included a definition (rather than just used the term) of "sexually explicit conduct" via RCW 9.68A.011(3).

4 FAILURE TO REGISTER AS A SEX OFFENDER

State v. Dollarhyde
COA No. 36047-4-III (Jul. 2, 2019)
Court of Appeals, Division III

FACTS:

The defendant was required to register as a sex offender stemming from a juvenile sex offense conviction. He lacked a fixed address, and was therefore subject to the weekly check-in requirement at the Sheriff's Office. Although the defendant did check in and complete the weekly forms, including adding his own notes to the back side of the paperwork, it was determined that for multiple days in the 2 week period he did not provide complete or accurate information.

The State charged the defendant with 2 counts of RCW 9A.44.130(6)(b) Failure to Register. At trial, the State did not provide affirmative evidence that it made a specific request for the statutorily required accurate accounting of the defendant's addresses/locations. The defendant appeals his conviction for lack of sufficiency of the evidence as to that element of the statute.

4 FAILURE TO REGISTER AS A SEX OFFENDER; TRANSIENT RSO

State v. Dollarhyde
COA No. 36047-4-III (Jul. 2, 2019)
Court of Appeals, Division III

TRAINING TAKEAWAY: Affirmative Request for Sex Offender Accounting Required

To convict a sex offender lacking a fixed address who is required to check in weekly with the local Sheriff's office of a violation of RCW 9A.44.130(6)(b), Failure to Register as a Sex Offender, the State must prove that it made a clear and specific request for the required accurate accounting of addresses where the sex offender stayed during the week in question.

4 FAILURE TO REGISTER AS A SEX OFFENDER

State v. Dollarhyde
COA No. 36047-4-III (Jul. 2, 2019)
Court of Appeals, Division III

TRAINING TAKEAWAY: Affirmative Request for Sex Offender Accounting Required

RCW 9A.44.130(6)(b) requires a Registered Sex Offender who lacks a fixed residence to report weekly, in person, to the sheriff of the county where they are registered on a specifically set business day. The RSO is required to keep an accurate accounting of where they stay during the week and provide it to the county sheriff *upon request*.

- Because the RSO statute establishes procedures that can lead to a person's loss of liberty, the statute is interpreted strictly.

- That strict interpretation means that the sheriff's office has to affirmatively prove that they made a **clear and specific request each week** for the RSO's accounting of addresses before a transient RSO can be convicted of Failure to Register.

4 FAILURE TO REGISTER AS A SEX OFFENDER

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4 FAILURE TO REGISTER AS A SEX OFFENDER

State v. Dollarhyde
COA No. 36047-4-III (Jul. 2, 2019)
Court of Appeals, Division III

TRAINING TAKEAWAY: Evidence Must Show an Affirmative Request for the Week in Question

The forms the defendant completed on the weeks in question did not affirmatively request an accounting of where he stayed that particular week. Without additional testimony or evidence proving the Sheriff's office made an affirmative request for the accounting, the court reversed the defendant's conviction for insufficient evidence to prove the Failure to Register charges.

Although the State provided evidence that the defendant consistently wrote where he stayed on the back of the forms, and employees testified that they had previously discussed the reporting requirements with the defendant, that did not satisfy the requirement that the Sheriff's office prove they made a clear request for that week's accounting.

It is NOT sufficient to make a continuing request once, perhaps years earlier.
There must be proof of a specific request for the address accounting for the week in question.

4 FAILURE TO REGISTER AS A SEX OFFENDER

State v. Dollarhyde
COA No. 36047-4-III (Jul. 2, 2019)
Court of Appeals, Division III

PRACTICE POINTERS: Weekly Transient RSO Check-In Form Amendments

A transient RSO weekly check-in form that explicitly requires that the RSO list every location where they stayed in the prior week will satisfy the Failure to Register statute's requirement that the State make a clear and specific request for the RSO's accurate accounting of all addresses for the week in question.

Agencies should work with their legal advisor or prosecutor to ensure their weekly RSO check-in form affirmatively requests that the transient RSO account for their whereabouts on each day of the preceding week.

WASPC maintains a variety of model policies, legal guidelines, and resources for law enforcement agencies on their website: RSO Information.

5 VEHICULAR HOMICIDE

State v. Frahm
444 P.3d 595, (Jul. 11, 2019)
Washington State Supreme Court

FACTS:

Shortly before 6am on a Sunday morning, the defendant was driving intoxicated and drove his truck erratically at a high rate of speed on several highways in Vancouver, Washington. 911 callers reported his dangerous driving, which included cutting off a vehicle and nearly rear-ending several others. The defendant was going 85 mph when he rear-ended a vehicle, and then fled the scene without stopping to render aid to the injured driver.

The collision caused the victim's vehicle to spin and ricochet into the median barrier until it came to rest across the left and middle lanes. A Good Samaritan driving in the same direction stopped to help the injured driver who was now trapped in his car. While the Good Samaritan was on the phone with 911, a minivan changed lanes after seeing the Good Samaritan's flashers activated on the shoulder, but did not see the original victim's disabled vehicle blocking the other lanes. The minivan struck the first victim's car, causing it to strike and grievously injure the Good Samaritan. The Good Samaritan died of his injuries 12 days after the collision.

5 VEHICULAR HOMICIDE

State v. Frahm
444 P.3d 595, (Jul. 11, 2019)
Washington State Supreme Court

FACTS, CONT.

The defendant was convicted at a jury trial of vehicular homicide, vehicular assault, hit-and-run, conspiracy to commit perjury, and false reporting. He appealed, arguing among other claims, that the State presented insufficient evidence to support his conviction for vehicular homicide. The Court of Appeals affirmed his convictions, and the Supreme Court now reviews the case to determine whether sufficient evidence supports the defendant's conviction for vehicular homicide.

5 VEHICULAR HOMICIDE

State v. Frahm
444 P.3d 595, (Jul. 11, 2019)
Washington State Supreme Court

TRAINING TAKEAWAY: Proximate Causation and Vehicular Homicide

A defendant was properly convicted of vehicular homicide where he struck a vehicle while driving under the influence and then fled the scene because those actions were the proximate cause of the death of a Good Samaritan who was killed while rendering aid to the occupant of the vehicle the defendant initially struck.

5 VEHICULAR HOMICIDE

State v. Frahm
444 P.3d 595, (Jul. 11, 2019)
Washington State Supreme Court

TRAINING TAKEAWAY: Vehicular Homicide Defined

RCW 46.61.520 - Vehicular Homicide:

(1) When the death of any person ensues within three years as a proximate result of injury proximately caused by the driving of any vehicle by any person, the driver is guilty of vehicular homicide if the driver was operating a motor vehicle:
  (a) While under the influence of intoxicating liquor or any drug, as defined by RCW 46.61.502; or
  (b) In a reckless manner; or
  (c) With disregard for the safety of others.

Vehicular Homicide is a strict liability offense, meaning the conduct of the defendant must be both (1) the actual cause, and (2) the 'legal' cause of the death.

Washington law refers to this 2-pronged causation as "proximate cause"

5 VEHICULAR HOMICIDE

State v. Frahm
444 P.3d 595, (Jul. 11, 2019)
Washington State Supreme Court

TRAINING TAKEAWAY: Legal Cause

Legal cause rests on policy considerations as to how far the consequences of a defendant's acts should extend, and is a question of law for the court to determine based on considerations of logic, common sense, justice, policy, and legal precedent.

- Legal cause in a criminal case requires a close relationship between the result achieved by the defendant's action and the result intended.

5 VEHICULAR HOMICIDE

State v. Frahm
444 P.3d 595, (Jul. 11, 2019)
Washington State Supreme Court

TRAINING TAKEAWAY: Legal Cause

Legal cause is established where a defendant's initial act was not only intentional, but illegal and capable of causing harm in and of itself.

- The defendant's act of hitting the first vehicle while driving recklessly and under the influence and then fleeing the scene were criminal.
- Those criminal acts were also volitional – conducted by the defendant's will and choice when he choose to get behind the wheel intoxicated, drive aggressively, and nearly rear-end several vehicles prior to hitting the initial vehicle.

In this case, liability should attach as a matter of law because the defendant's acts were criminal, caused direct harm as well as the risk of future harm, and occurred close in time and location to the ultimate harm to the Good Samaritan.

5 VEHICULAR HOMICIDE

State v. Frahm
444 P.3d 595, (Jul. 11, 2019)
Washington State Supreme Court

TRAINING TAKEAWAY: Actual Cause

Actual cause (or "cause in fact") refers to the "but for" consequences of an act – the physical connection between an act and an inquiry. It is generally a question of fact left to the jury who determine what actually occurred.

- An **intervening cause** is a force that actively operates to produce harm to another after the actor's original act or omission has been committed.

- An intervening cause that is strong enough to relieve the wrongdoer of any liability becomes a **superseding cause** unless the intervening act should have been reasonably foreseen by the defendant.

5 VEHICULAR HOMICIDE

State v. Frahm
444 P.3d 595, (Jul. 11, 2019)
Washington State Supreme Court

TRAINING TAKEAWAY: Intervening and Superceding Cause

The defendant claims that he is not guilty of vehicular homicide because an intervening, superseding cause (the Good Samaritan crossing the freeway on foot to render aid to the driver injured in the initial collision and/or the secondary collision between the minivan and the initial victim vehicle) relieved him of criminal liability for the Good Samaritan's death.

Intervening Acts:
The Good Samaritan's act of crossing the freeway to aid the injured driver and the secondary collision by the minivan were intervening acts because they both occurred after the defendant's criminal act of hitting the first vehicle while driving under the influence and then fleeing the scene.

Superceding Cause:
Neither intervening act superseded the defendant's criminal acts as the actual cause of the Good Samaritan's death, and the jury was properly given the question of whether the actions could or should have been reasonably foreseen by the defendant.

6 COMMUNITY CARETAKING

State v. Harris
COA No. 77987-7-I (July 22, 2019)
Court of Appeals, Div. I

FACTS:

A concerned citizen flagged down officers to report that there was a vehicle in a public parking lot with two occupants who were either sleeping or unconscious in the middle of the day. Officers located the vehicle, briefly observed the occupants slumped over in their seats, and concluded that due to their training and experience, the occupants had potentially overdosed on heroin. The officers observed no other visible evidence in the vehicle that suggested drug use or any other crime. Without any other attempt to contact or rouse them, the officers opened the doors to the vehicle and woke up the occupants. After they opened the doors, the officers observed drug paraphernalia consistent with the use of heroin.

The defendant was arrested for possession of drug paraphernalia, and then subsequently charged him with Possession of Stolen Property, Identity Theft, and Making a False Statement to a Public Servant. He now appeals his conviction.

6 COMMUNITY CARETAKING

State v. Harris
COA No. 77987-7-I (July 22, 2019)
Court of Appeals, Div. I

TRAINING TAKEAWAY:

It is not a reasonable, objective exercise of the community caretaking function for officers to open the doors of a vehicle parked in a public parking lot during daytime without first making some attempt to rouse the occupants where there was no evidence of drug use or medical emergency other than the observed sleeping or unconsciousness and knowledge of the general opioid crisis.

6 COMMUNITY CARETAKING

State v. Harris
COA No. 77987-7-I (July 22, 2019)
Court of Appeals, Div. I

TRAINING TAKEAWAY: Community Caretaking Exception

The **Community Caretaking Exception** to the warrant requirement covers both situations requiring emergency aid (which involve greater urgency and justify a greater intrusion) and routine checks on health and safety.

The Community Caretaking Function is separate from law enforcement's investigative function.

When determining whether a warrantless search made under the community caretaking exception is reasonable, the court weighs the privacy interest of the individual against the public's interest in having the police perform the caretaking function.

6 COMMUNITY CARETAKING

State v. Harris
COA No. 77987-7-I (July 22, 2019)
Court of Appeals, Div. I

Washington's Current Community Caretaking Test Requires:

- The officer has a reasonable belief that assistance is immediately needed;
- The search is not primarily motivated by an intent to arrest or seek evidence; and
- The place being searched is associated with the need for assistance.

6 COMMUNITY CARETAKING

State v. Harris
COA No. 77987-7-I (July 22, 2019)
Court of Appeals, Div. I

PRACTICE POINTER:

It's important to note that the officer's intervention in this scenario wasn't improper or ill advised, it's just that the intrusion exceeded the scope of what was permissible given the circumstances.

- During their initial inspection of the car, had the officers merely shouted to the occupants or knocked on the car windows and been unsuccessful in the attempt to rouse them, they would have been justified in the further intrusion into the vehicle. Without first taking that step, the additional intrusion wasn't justified by the facts.

With the information they had – that a civilian was concerned about two occupants in a vehicle in a public parking lot who appeared to be passed out and slumped over in their seats – the officers were only justified to contact the occupants for a routine health and safety check and to inquire whether they needed assistance.

7 SEARCH AND SEIZURE; FIREARM SEIZURE; MENTAL HEALTH; COMMUNITY CARETAKING

Rodriguez v. City of San Jose
COA No. 77987-7-I (July 22, 2019)
Court of Appeals, Division I

FACTS:

Late one night in January 2013, a wife called 911 to ask the San Jose Police Department to conduct a welfare check on her husband. San Jose police officers had responded to several such calls on prior occasions due to the husband's mental health issues. Before they arrived, the officers learned there were multiple firearms in the home.

Arriving to the home, the officers found the husband ranting about the CIA, the army, and people watching him. He also mentioned "[s]hooting up schools" and that he had a "gun safe full of guns." When asked if he wanted to hurt himself, he attempted to break his own thumb.

7 SEARCH AND SEIZURE; FIREARM SEIZURE; MENTAL HEALTH; COMMUNITY CARETAKING

Rodriguez v. City of San Jose
COA No. 77987-7-I (July 22, 2019)
Court of Appeals, Division I

FACTS, cont.:

Officers legally detained the plaintiff's husband for a mental health evaluation pursuant to California's involuntary treatment act, which allows an officer, upon probable cause that an individual is a danger to himself or another because of a mental health disorder, to take the person into custody and place him in a medical facility for 72-hour treatment and evaluation. California law also requires law enforcement to confiscate any firearms or deadly weapons owned, possessed, or otherwise controlled by an individual subject to a mental health detention. The wife opened a gun safe and officers seized 12 guns – 11 of which were either unregistered or registered to the husband alone, and 1 which was registered to the wife prior to her marriage. The wife objected to the seizure of her personal firearm as she assisted the officers will packing up the guns.

7 SEARCH AND SEIZURE; FIREARM SEIZURE; MENTAL HEALTH; COMMUNITY CARETAKING

Rodriguez v. City of San Jose
COA No. 77987-7-I (July 22, 2019)
Court of Appeals, Division I

FACTS, cont.:

The City filed a forfeiture action in the California Superior Court, which the wife contested as to outright ownership of her personal firearm, and community property ownership in the other 11 guns. She argued that the court had no right to interfere in her 2nd Amendment right to possess firearms because it was only her husband, and not her, who was barred. She contended that the husband's safety would not be in danger because she would secure the returned guns in the gun safe under a new lock code unknown to the husband. While acknowledging that nothing prevented the wife from merely going into a gun store and purchasing a new handgun, the court granted the City's forfeiture petition as to the seized guns due to the public safety concerns at stake.

The wife appealed the ruling to the California Court of Appeal which upheld the forfeiture ruling citing the likelihood of danger presented by the husband, and noting that the wife had "other viable options," including selling or storing the guns outside the home, or availing herself of the California legal process for return of firearms in the possession of law enforcement.

7 SEARCH AND SEIZURE; FIREARM SEIZURE; MENTAL HEALTH; COMMUNITY CARETAKING

Rodriguez v. City of San Jose
COA No. 77987-7-I (July 22, 2019)
Court of Appeals, Division I

FACTS, cont.:

Following the dismissed appeal, the wife followed the necessary steps under California law to become eligible for the City to return the firearms to her. She changed the registration and ownership so that all 12 guns were registered to her alone, and obtained gun release clearances from the California DOJ. When she requested the City release the guns, they against denied the request. The wife then sued the city, the police department, and the individual officers, alleging violations of her 2nd, 4th, 5th, and 14th Amendment rights, as well as filed a claim under California law.

7 SEARCH AND SEIZURE; FIREARM SEIZURE; MENTAL HEALTH; COMMUNITY CARETAKING

Rodriguez v. City of San Jose
COA No. 77987-7-I (July 22, 2019)
Court of Appeals, Division I

TRAINING TAKEAWAY: 4th Amendment Claim

Officers did not violate a wife's 4th Amendment rights where they conducted a warrantless seizure of firearms from the marital residence upon developing probable cause to detain the husband for a 72-hour mental health evaluation following a 911 call, they expected he would have access to firearms and present a serious public safety threat if he returned to the home, and they didn't know how soon he might return.

The seizure was justified under the **community caretaking function** – extending the previously recognized authority for officers to impound hazardous vehicles – because the urgent nature of the public safety interest sufficiently outweighed the significant privacy interest in the personal property kept in the home.

7 SEARCH AND SEIZURE; FIREARM SEIZURE; MENTAL HEALTH; COMMUNITY CARETAKING

Rodriguez v. City of San Jose
COA No. 77987-7-I (July 22, 2019)
Court of Appeals, Division I

TRAINING TAKEAWAY: Community Caretaking Function and Firearm Seizure

A seizure of a firearm in the possession or control of a person who has been detained because of an acute mental health episode is a legitimate response to an immediate threat to community safety.

The same factors at issue in the context of emergency exception home entries and vehicle impoundments apply — (1) the public safety interest; (2) the urgency of that public interest; and (3) the individual property, liberty, and privacy interests.

The courts will look to balance these factors, based on all of the facts available to an objectively reasonable officer in that circumstance, when determining whether such a seizure of a firearm falls within an exception to the warrant requirement.

7 SEARCH AND SEIZURE; FIREARM SEIZURE; MENTAL HEALTH; COMMUNITY CARETAKING

Rodriguez v. City of San Jose
COA No. 77987-7-I (July 22, 2019)
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TRAINING TAKEAWAY: Factors Considered

- Officers had been to the home on multiple prior occasions responding to the husband's mental health crises.
- On the night in question he displayed paranoid behavior, mentioned "shooting up schools," and specifically referenced the guns in the safe.
- A reasonable officer should have been deeply concerned by the prospect that the husband might have access to firearms in the near future.
- Although they were going to detain him for evaluation, the officer had no way of knowing when the husband would be returning from the hospital.

These factors created a **substantial and urgent public safety interest** in ensuring the husband would not have access to the guns. Although the wife noted in her argument that she could change the combination to the safe to prevent the husband from accessing the guns, the court remained concerned that the 400 pound husband could easily overpower his wife to gain access.

7 SEARCH AND SEIZURE; FIREARM SEIZURE; MENTAL HEALTH; COMMUNITY CARETAKING

Rodriguez v. City of San Jose
COA No. 77987-7-I (July 22, 2019)
Court of Appeals, Division I

TRAINING TAKEAWAY: 2nd Amendment Claim

The legal doctrine of "issue preclusion" barred this court from reconsidering the wife's 2nd Amendment claim as the California state courts had already addressed it at both the trial and appellate level and concluded that the seizure and retention of the firearms did not violate her right to keep and bear arms.

FURTHER READING

For further cases of interest to law enforcement, please see the comprehensive monthly Legal Update for Law Enforcement prepared by Attorney John Wasberg (former longtime editor of the original LED), which is published on the WASPC Law Enforcement Resources webpage:

http://www.waspc.org/legal-update-for-washington-law-enforcement

The Washington Prosecutor's Association publishes a comprehensive weekly summary of a wide range of caselaw geared toward the interests of Washington State Prosecutors. This resource is authored by WAPA Staff Attorney Pam Loginsky.

http://70.89.120.146/wapa/CaseLaw.html

Questions?

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