Law Enforcement Digest

April 2017

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

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HONOR ROLL

746 Basic Law Enforcement Academy – December 12, 2016 through April 20, 2017

President:	Officer Mark Rawlins, Seattle PD
Best Overall:	Officer Justin Materne, Vancouver PD
Best Academic:	Deputy Jacob Reed, Pierce County SO
Best Practical Skills:	Officer Justin Materne, Vancouver PD
Patrol Partner:	Officer Jared Pingul, Steilacoom PD
Tac Officer:	Steve Grossfeld, WSCJTC
	Ginger Richardson, WSCJTC

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Davis v. United States, 854 F.3d 594, 2017 WL 1359482 (April 13, 2017).

Joann Davis is the widow of a NASA engineer. In appreciation of her late husband's services, NASA gave him a paperweight with "a rice-grain-sized fragment of lunar material" and a paperweight with "a small piece of the Apollo 11 heat shield." Davis had fallen on hard financial times and decided to sell the paperweight to help pay for her severely ill son's medical care and provide for her grandchildren.

Davis emailed NASA for help in selling the paperweight. NASA forwarded the email to the Office of Inspector General, and assigned a Special Agent "to investigate whether Davis indeed possessed a moon rock."

The Special Agent arranged for a confidential source to pose as "Jeff," a broker who would help Davis sell the paperweights. "Jeff" contacted Davis. All of the phone calls between "Jeff" and Davis (except the first phone call) were recorded. During these phone calls, "Davis expressed concern that the paperweights would be confiscated by NASA unless she could somehow prove they were actually a gift to her late husband; she told 'Jeff' that she had spoken with her accountant regarding her tax liability for the sale because she could not 'hide stuff' and was 'not that kind of person'; and she explained that she wanted to 'do things legally' because she is 'just not an illegal person.'" Davis also informed "Jeff" that "she had several firearms in her home that she was trying to sell."

During another call, "Davis told 'Jeff' that she heard of someone serving a prison sentence for selling lunar material, but she understood her situation to be different because her late husband received the paperweights as a gift." 'Jeff" never told Davis "that all lunar material is property of the U.S. government or that her possession of the paperweights was illegal."

The Special Agent obtained a search warrant to search Davis and seize the moon rock paperweight. The Special Agent arranged a sting operation for "Jeff" to meet Davis at a Denny's Restaurant to sell the paperweights. The search warrant authorized the federal agents to search Davis and seize the moon rock paperweight. The following happened at the Denny's Restaurant:

> Davis proceeded to meet with "Jeff" at the restaurant. She was accompanied by [her current husband], who was approximately 70 years old. At the time of the incident, Davis was 74 and 4'11" tall. Three armed federal agents and three Riverside County Sheriff's personnel were present, but not visible.
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> Once Davis, [her current husband], and "Jeff" were seated in a booth inside the restaurant and exchanged pleasantries, Davis placed the paperweight son the table. "Jeff" said he thought the heat shield was worth about $2,000. Shortly thereafter, [the Special Agent] announced himself as a "special agent," and another officer's hand reached over Davis, grabbed her hand, and took the moon rock paperweight. . . . Then, an officer grabbed Davis by the arm, pulling her from the booth. At this time, Davis claims that she felt like she was beginning to lose control of her bladder. One of the officers took her purse.

> . . .
> Four officers escorted [Davis] to the restaurant parking lot after patting [her] down to ensure [she] was not armed.
> . . .
> Davis claims that she told officers twice during the escort that she needed to use the restroom, but that they did not answer and continued walking her toward an SUV where [the Special Agent] was waiting. Davis subsequently urinated in her clothing. . . . [The Special Agent] knew she was wearing urine-soaked pants as he interrogated her in the restaurant parking lot. Davis claims that she was not allowed an opportunity to clean herself or change her clothing, despite communicating to [the Special Agent] that she was 'very uncomfortable.'

The Special Agent questioned Davis between ninety minutes to two hours in the parking lot before allowing her to leave. The U.S. Attorney declined to prosecute Davis.

Davis filed a civil rights lawsuit against the Special Agent for violating her Fourth Amendment rights. Before trial, the Special Agent moved the trial court to find that he was entitled to qualified immunity. The trial court denied the motion. The Special Agent appealed to the Ninth Circuit Court of Appeals. The Ninth Circuit agreed with the trial court.

An officer is not entitled to qualified immunity if the officer violated the plaintiff's constitutional right, and the plaintiff's constitutional right was 'clearly established' at the time of the incident. In this case, the Ninth Circuit found that the Special Agent's detention of Davis violated her Fourth Amendment rights because the detention was unreasonably prolonged and unnecessarily degrading, and the constitutional right was clearly established at the time of her detention.

"Under the Fourth Amendment, a warrant to search for contraband founded on probable cause implicitly carries with it the limited authority to detain the occupants of the premises while a proper search is conducted." However, an officer may exceed this limited authority by unreasonably prolonging a detention or if special circumstances are present. "For instance, search-related detentions that are unnecessarily painful or degrading and lengthy detentions of the elderly, or of children, or of individuals suffering from a serious illness or disability raise additional concerns." An officer must "carefully tailor" the seizure "to the law enforcement interests that justify detention while a search warrant is being executed."

In this case, the Ninth Circuit found that the Special Agent should have known his detention of Davis was unreasonable and violated her clearly established Fourth Amendment rights:

(1) The Special Agent "knew that Davis was a slight, elderly woman, who was then nearly seventy-five years old, and less than five feet tall."

(2) The Special Agent "knew that Davis lost control of her bladder during the search and was wearing visibly wet pants."

(3) The Special Agent "knew that Davis [and her current husband] were unarmed and that the search warrant had been fully executed by the time Davis was escorted to the parking lot."

(4) The Special Agent "knew that Davis had not concealed possession of the paperweights, but rather had reached out to NASA for help in selling the paperweights."

(5) The Special Agent "knew the exact content [of the recorded calls between Davis and "Jeff"], including that Davis was experiencing financial distress as a result of having to raise grandchildren after her daughter died, her son was severely ill and required expensive medical care, and Davis needed a transplant. Those conversations also revealed Davis's desire to sell the paperweights in a legal manner and her belief that she possessed them legally because they were a gift to her late husband."

(6) "Because the moon rock paperweight had been seized and both Davis and [her current husband] had already been searched for other weapons and contraband, [the Special Agent] had no law enforcement interest in detaining Davis for two hours while she stood wearing urine-soaked pants in a restaurant's parking lot during the lunch rush. This is precisely the type of 'unusual case' involving 'special circumstances' that leads [to the conclusion] that a detention is unreasonable."

As a result, the Ninth Circuit found that the Special Agent's "detention of Davis, an elderly woman, was unreasonably prolonged and unnecessarily degrading." The Ninth Circuit affirmed the trial court's denial of qualified immunity to the Special Agent.

CIVIL RIGHTS LAWSUIT: DETECTIVE'S DELIBERATE MISCHARACTERIZATION OF ALLEGED CHILD VICTIM'S STATEMENTS WAS A DELIBERATE FABRICATION OF EVIDENCE AND VIOLATED THE FOURTEENTH AMENDMENT.
Spencer v. Peters, 857 F.3d 789, 2017 WL 2174541 (May 18, 2017).

Clyde Spencer had two children with DeAnne (his first wife), Matthew and Kathryn. After his divorce with DeAnne, Spencer lived with Karen Stone for two years. Spencer later married his second wife Shirley, and became a step-father to Shirley's son, Hansen.

Matthew and Kathryn visited Spencer and Shirley for six weeks during the summer of 1984. At the end of that visit, Kathryn allegedly told Shirley that Spencer, DeAnne, Karen Stone, and Matthew had sexually abused her. Spencer and Shirley reported the alleged sexual abuse to authorities in both Washington and California (where Matthew and Kathryn lived with their mother, DeAnne).

A Sheriff's Office Detective investigated the allegations. The Detective interviewed Kathryn several times. After each interview, the Detective prepared a report that recounted Kathryn's statements to the Detective. The reports stated that Kathryn had described sexual abuse by her father, Spencer. The Detective also interview Matthew. The Detective's report documenting her interview with Matthew stated that Matthew was aware of the sexual abuse allegations. Kathryn and Matthew later testified that their quotations and statements in the Detective's reports were false.

The prosecution charged Spencer with statutory rape of his children and step-son. Spencer entered an *Alfred* plea. Over twenty years later, the court allowed Spencer to withdraw his *Alfred* plea, and the prosecutor dismissed the criminal charges.

Spencer filed a 42 U.S.C. § 1983 lawsuit against the Detective (and other officials) alleging that the Detective violated his Fourteenth Amendment rights by deliberately fabricating the children's statements about sexual abuse in her reports. The case was heard by a jury, and the jury awarded Spencer $9 million in damages. The trial court set aside the jury's verdict by finding that Spencer presented no evidence that the Detective know or should have known Spencer was

innocent. Spencer appealed to the Ninth Circuit Court of Appeals. The Ninth Circuit Court of Appeals disagreed with the trial court.

"The Fourteenth Amendment prohibits the deliberate fabrication of evidence by a state official." A plaintiff may show that an officer deliberately fabricated evidence by: (1) circumstantial evidence such as when an officer continues a criminal investigation of a suspect even though the officer knows (or should know) that the suspect is innocent; and (2) direct evidence such as "when an interviewer deliberately mischaracterizes witness statements in her investigative report."

In this case, the Ninth Circuit found that since there was direct evidence that the Detective had deliberately mischaracterized the children's statements in her reports, Spencer did not have to provide circumstantial evidence that the Detective knew or should have known that Spencer was innocent.

The Ninth Circuit reasoned that the Detective deliberately mischaracterized the statements (and deliberately fabricated evidence in violation of the Fourteenth Amendment):

> [I]f Kathryn's testimony [that her statements in the Detective's reports about the sexual abuse by Spencer are incorrect] is credited, the misquotations here cannot be explained as carelessness or as a mistake of time; nor are they trivial or without consequence. Katheryn told [the Detective] that no abuse had occurred. [The Detective] falsely reported, in quotations attributed to Kathryn, that Kathryn had made detailed, explicit statements of abuse. [Spencer] testified that, due to the fabricated evidence, he entered an *Alford* plea, causing him to spend nearly two decades in prison. Because [Spencer] introduced direct evidence of deliberate fabrication, he did not have to prove that [the Detective] knew or should have known that he was innocent.
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> . . .
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> In sum, the Constitution prohibits the deliberate fabrication of evidence whether or not the officer knows the person is innocent.

As a result, the Ninth Circuit reversed the trial court and reinstated the $9 million verdict to Spencer.

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WASHINGTON STATE COURT OF APPEALS

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MANDATORY REPORTING: RCW 26.44.030 REQUIRES A SCHOOL TEACHER TO REPORT INFORMATION ABOUT CHILD ABUSE OBTAINED OUTSIDE OF THE COURSE OF HER EMPLOYMENT AS A TEACHER.

State v. James-Buhl, 198 Wn. App. 288, 393 P.3d 817, 2017 WL 1057526 (March 21, 2017).

Tanya James-Buhl was a junior high school teacher. James-Buhl's daughters told her that their step-father had sexually molested them. James-Buhl did not report the alleged sexual abuse by her daughter's step-father (her current husband) to Child Protective Services (CPS) or law enforcement. The children's youth pastor reported the alleged sexual abuse to CPS, and also informed CPS "that James-Buhl had not reported the abuse, but that she was 'handling things in the house.'"

The prosecution charged James-Buhl with failure to comply with the mandatory reporting law, RCW 26.44.030(1)(a). Before trial, the defense moved to dismiss the charges and argued "that RCW 26.44.030(1)(a) did not apply because her daughters were not her students and that she

learned about the alleged abuse in her capacity as their mother and not as a teacher." The trial court agreed and dismissed the charges. The prosecution appealed to the Court of Appeals, Division Two. The Court of Appeals disagreed with the trial court.

Based on the statute's plain language, the Court of Appeals held that mandatory reporters must report suspected child abuse in all circumstances when there is reasonable cause. Under RCW 26.44.030(1)(a), certain professionals "who regularly have contact with children" are required to report suspected child abuse. The statute provides:

> When any . . . professional school personnel . . . has reasonable cause to believe that a child has suffered abuse or neglect, he or she shall report such incident, or cause a report to be made to the proper law enforcement agency or to the [Department of Social and Health Services] as provided in RCW 26.44.040.

The Court of Appeals found that this statute "does not expressly limit the mandatory reporting duty to information obtained in the course of the professional's employment." Accordingly, the Court of Appeals held "that the mandatory reporting duty for the professionals identified [in RCW 26.44.030(1)(a)] applies in all circumstances and not only when information about child abuse is obtained in the course of employment."

As a result, the Court of Appeals reversed the trial court and remanded the case for further proceedings.

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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]

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