

April 2020 LAW ENFORCEMENT DIGEST




This information is for REVIEW only. If you wish to take this course for CREDIT toward your 24 hours of in-service training, please contact your training officer. They can assign this course in Acadis.

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

CONTENT SUMMARY

COURSE INFORMATION



This course covers select court rulings issued by the three divisions of the Washington Courts of Appeal, the Washington State Supreme Court, the federal Ninth Circuit Court of Appeals, and the United States Supreme Court.

The cases are briefly summarized, with emphasis placed on how the rulings may affect Washington law enforcement officers or influence future investigations and charges.

Covering Cases Published in April 2020

This course covers select court rulings issued by the three divisions of the Washington Courts of Appeal, the Washington State Supreme Court, the federal Ninth Circuit Court of Appeals, and the United States Supreme Court.

The cases are briefly summarized, with emphasis placed on how the rulings may affect Washington law enforcement officers, or influence future investigations and charges.

CASE MENU



LAW ENFORCEMENT DIGEST

APRIL 2020 TOPIC INDEX

| | | | | |
|-----------------------------------------------------------------------------------|-----------------------------------------------------------------------------------|-----------------------------------------------------------------------------------|-----------------------------------------------------------------------------------|------------------------------------------------------------------------------------|
|  |  |  |  |  |
| 1 | 2 | 3 | 4 | 5 |
| TRAFFIC; TERRY STOP; DWLS | SEXUAL ABUSE OF A CHILD; ENTRAPMENT | DUI; TRAFFIC; TERRY STOP | SEX OFFENDER; FAILURE TO REGISTER | MIRANDA; BORDER CROSSING; IN CUSTODY |

2. KANSES V. GLOVER

2.1 TRAFFIC STOPS; TERRY; DWLS



Kansas v. Glover
No. 18-556 (April 6, 2020)
United States Supreme Court

TRAFFIC STOPS; TERRY STOP; DWLS

State versus J.K.T.; Court of Appeals, Division 1

2.2 FACTS

FACTS

- * ON ROUTINE PATROL
- * DEPUTY RAN TRUCK'S LICENSE PLATE
- * REGISTERED OWNER HAD REVOKED LICENSE
- * TRAFFIC STOP CONFIRMED R.O. WAS DRIVER
- * R.O. ARRESTED AS HABITUAL TRAFFIC OFFENDER

While on routine patrol, a deputy in Kansas ran a license plate check on a pickup truck driving in front of him. The plate returned with the defendant, Mr. Glover, listed as the registered owner. Glover's driver's license status came back indicating it was revoked.

The deputy didn't observe any traffic infractions or attempt to identify the driver of the truck. Believing the registered owner with the revoked driver's license was the person driving the truck, the deputy initiated a traffic stop to investigate. He had no information or evidence that would lead him to doubt his suspicion.

The deputy confirmed that his suspicion was correct when he identified that the registered owner, Mr. Glover, was the driver of the truck. Glover was charged with driving as a habitual traffic offender.

2.3 FACTS

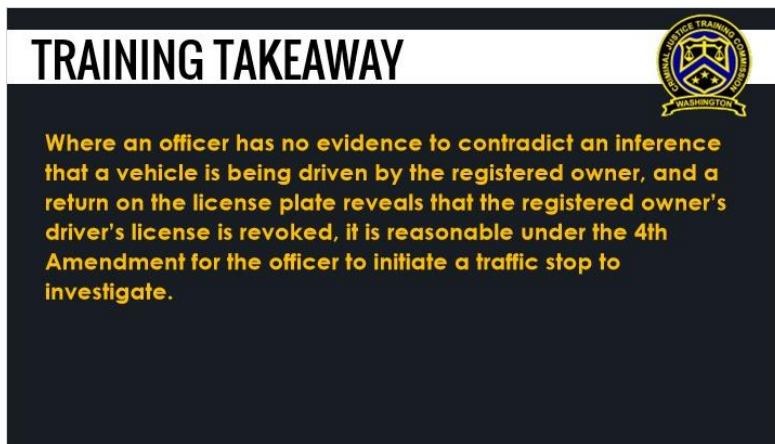
FACTS

- * TRAFFIC STOP CHALLENGED UNDER 4TH AMENDMENT
- * MOVED TO SUPPRESS ALL EVIDENCE CLAIMING DEPUTY LACKED REASONABLE SUSPICION
- * APPEALED ALL THE WAY THROUGH KANSAS COURTS WITH KANSAS SUPREME COURT RULING FOR THE DEFENDANT
- * CASE NOW BEFORE THE US SUPREME COURT

The defendant moved to suppress all evidence stemming from the traffic stop, claiming that the deputy lacked reasonable suspicion for the stop.

The District Court granted his motion, but the Court of Appeals reversed and reinstated the charge. The Kansas Supreme Court then reversed the Court of Appeals, holding that the deputy violated the 4th Amendment by stopping the defendant without reasonable suspicion of criminal activity. The US Supreme Court now reviews the issue.

2.4 TRAINING TAKEAWAY



TRAINING TAKEAWAY

Where an officer has no evidence to contradict an inference that a vehicle is being driven by the registered owner, and a return on the license plate reveals that the registered owner's driver's license is revoked, it is reasonable under the 4th Amendment for the officer to initiate a traffic stop to investigate.

Where an officer has no evidence to contradict an inference that a vehicle is being driven by the registered owner, and a return on the license plate reveals that the registered owner's driver's license is revoked, it is reasonable under the 4th Amendment for the officer to initiate a traffic stop to investigate.

2.5 TERRY STOP STANDARD




TERRY STOP STANDARD

The 4th Amendment of the US Constitution permits an officer to initiate a brief investigative traffic stop when he has a "particularized and objective basis for suspecting the particular person stopped of criminal activity."

Terry v. Ohio, 392 U. S. 1 (1968)

The Terry standard instructs that the 4th Amendment of the US Constitution permits an officer to initiate a brief investigative traffic stop when he has a “particularized and objective basis for suspecting the particular person stopped of criminal activity.”

2.6 REASONABLE SUSPICION



REASONABLE SUSPICION


Reasonable suspicion requires more than a mere hunch, but less than probable cause or preponderance of the evidence.

It allows officers to make commonsense judgments and inferences about human behavior, and does not require them to rule out the possibility of innocent conduct.

Reasonable suspicion requires more than a mere hunch, but less than probable cause or preponderance of the evidence.

It allows officers to make commonsense judgments and inferences about human behavior and does not require them to rule out the possibility of innocent conduct.

2.7 PRIVACY INTRUSION JUSTIFIED



JUSTIFICATION FOR INTRUSION

An officer with reasonable suspicion that traffic laws are being violated may stop a vehicle to investigate.

- States have a vital interest in ensuring that only qualified individuals who are abiding by licensing, registration, and vehicle inspection requirements are permitted to operate motor vehicles.
- Traffic violators are a very real threat to public safety on our roadways, which justifies a reasonable intrusion into their privacy to ensure compliance with traffic law.

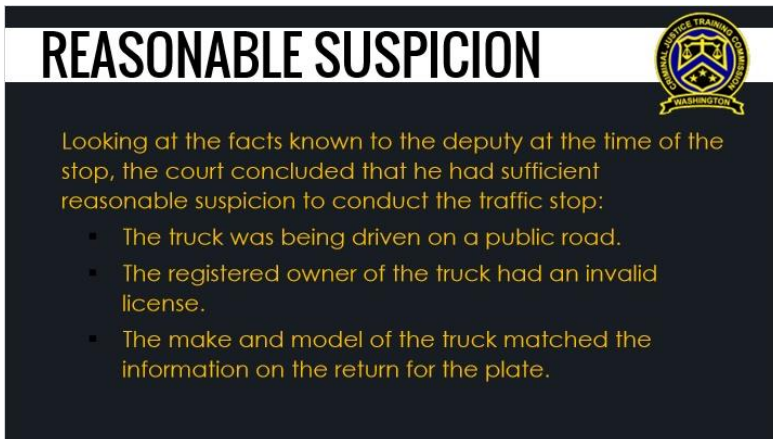
An officer with reasonable suspicion that traffic laws are being violated may stop a vehicle to investigate.

- States have a vital interest in ensuring that only qualified individuals who are abiding by

licensing, registration, and vehicle inspection requirements are permitted to operate motor vehicles.

- Traffic violators are a very real threat to public safety on our roadways, which justifies a reasonable intrusion into their privacy to ensure compliance with traffic law.

2.8 REASONABLE SUSPICION



REASONABLE SUSPICION

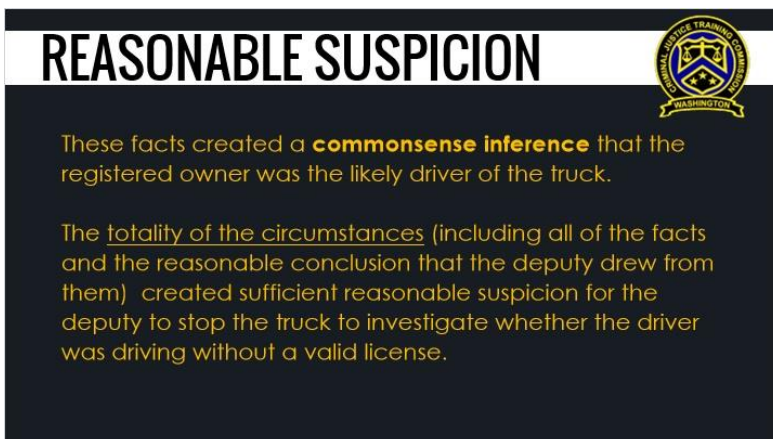
Looking at the facts known to the deputy at the time of the stop, the court concluded that he had sufficient reasonable suspicion to conduct the traffic stop:

- The truck was being driven on a public road.
- The registered owner of the truck had an invalid license.
- The make and model of the truck matched the information on the return for the plate.

Looking at the facts known to the deputy at the time of the stop, the court concluded that he had sufficient reasonable suspicion to conduct the traffic stop because:

- The truck was being driven on a public road.
- The registered owner of the truck had an invalid license.
- The make and model of the truck matched the information on the return for the plate.

*2.9 REASONABLE SUSPICION



REASONABLE SUSPICION

These facts created a **commonsense inference** that the registered owner was the likely driver of the truck.

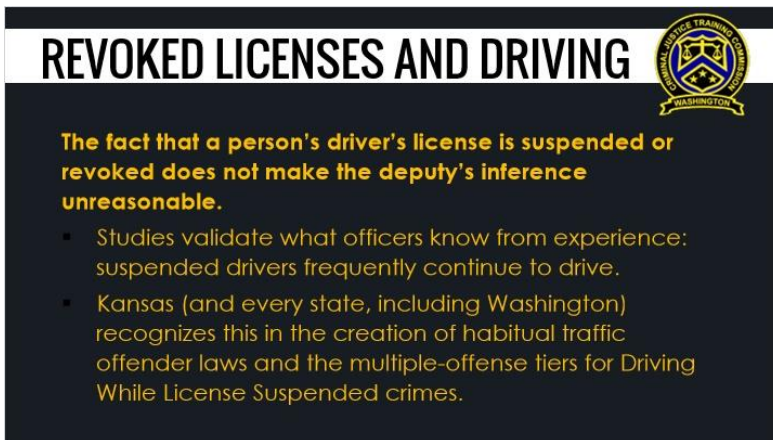
The totality of the circumstances (including all of the facts and the reasonable conclusion that the deputy drew from them) created sufficient reasonable suspicion for the deputy to stop the truck to investigate whether the driver was driving without a valid license.

These facts created a **commonsense inference** that the registered owner was the likely

driver of the truck.

The totality of the circumstances (including all of the facts and the reasonable conclusion that the deputy drew from them) created sufficient reasonable suspicion for the deputy to stop the truck to investigate whether the driver was driving without a valid license.

2.10 REVOKED LICENSES & DRIVING



REVOKED LICENSES AND DRIVING


The fact that a person's driver's license is suspended or revoked does not make the deputy's inference unreasonable.

- Studies validate what officers know from experience: suspended drivers frequently continue to drive.
- Kansas (and every state, including Washington) recognizes this in the creation of habitual traffic offender laws and the multiple-offense tiers for Driving While License Suspended crimes.

The fact that a person's driver's license is suspended or revoked does not make the deputy's inference unreasonable.

- Studies validate what officers know from experience: suspended drivers frequently continue to drive.
- Kansas (and every state, including Washington) recognizes this in the creation of habitual traffic offender laws and the multiple-offense tiers for Driving While License Suspended crimes.

2.11 SOURCES OF REASONABLE SUSPICION

SOURCES OF REASONABLE SUSPICION 


Nothing in the 4th Amendment or existing caselaw suggests that in determining whether reasonable suspicion exists, an officer can only draw inferences based on knowledge gained through law enforcement training and experience.

- Forming a belief that the driver of a car is likely its registered owner does not require any specialized training; rather, it is a reasonable conclusion made by ordinary people on a daily basis.

Nothing in the 4th Amendment or existing caselaw suggests that in determining whether reasonable suspicion exists, an officer can only draw inferences based on knowledge gained through law enforcement training and experience.

- The inference that the driver of a car is its registered owner does not require any specialized training; rather, it is a reasonable inference made by ordinary people on a daily basis.

2.12 SOURCES OF REASONABLE SUSPICION

SOURCES OF REASONABLE SUSPICION 

The Majority of the Court strongly dismisses the dissenting opinion's claim to the contrary, noting that to hold otherwise would require officers to somehow prevent themselves from drawing any factual inferences based on commonly held knowledge they've acquired in their everyday lives instead of what they know from their police training and experience.

- Specialized training and experience is often crucially important in an officer's decisions, but as the court points out, it isn't always required.

The Majority of the Court strongly dismisses the dissenting opinion's claim to the contrary, noting that to hold otherwise would require officers to somehow prevent themselves from drawing any factual inferences based on commonly held knowledge they've acquired in their everyday lives instead of what they know from their police training and experience.

- Specialized training and experience are often crucially important in an officer's decisions, but as the court points out, it isn't always *required*.

2.13 INDIVIDUALIZED SUSPICION

INDIVIDUALIZED SUSPICION

While reasonable suspicion may be based heavily on probabilities, here the deputy had specific facts about the truck and driver that he took into consideration along with his common sense assumption that the registered owner of a car is probably also its driver to then form reasonable suspicion that a specific individual (the driver) was potentially engaged in specific criminal activity (driving without a valid license).

While reasonable suspicion may be based heavily on probabilities, here the deputy had specific facts about the truck and driver that he took into consideration along with his common sense assumption that the registered owner of a car is probably also its driver to then form reasonable suspicion that a specific individual (the driver) was potentially engaged in specific criminal activity (driving without a valid license).

2.14 INDIVIDUALIZED SUSPICION

INDIVIDUALIZED SUSPICION


Officers don't have unlimited discretion to stop drivers at random, nor to stop drivers whose conduct is no different from any other driver's.

DATABASE RECORDS + COMMON SENSE INFERENCE + OBSERVATIONS = REASONABLE SUSPICION

Officers don't have unlimited discretion to stop drivers at random, nor to stop drivers whose conduct is no different from any other driver's.

2.15 PRESENCE OF CONTRADICTIONARY EVIDENCE

REASONABLENESS OF THE STOP



The stop was reasonable under the totality of the circumstances where the deputy had no facts to eliminate his reasonable suspicion (such as if the driver had been a female and the R.O. was listed as a male).


- Being aware of additional information or evidence at the time of the stop that could eliminate reasonable suspicion could render a stop unreasonable.

The stop was reasonable under the totality of the circumstances where the deputy had no facts to eliminate his reasonable suspicion (such as if the driver had been a female and the R.O. was listed as a male).

- Being aware of additional information or evidence at the time of the stop that could eliminate reasonable suspicion could render a stop unreasonable.

2.16 WASHINGTON LAW

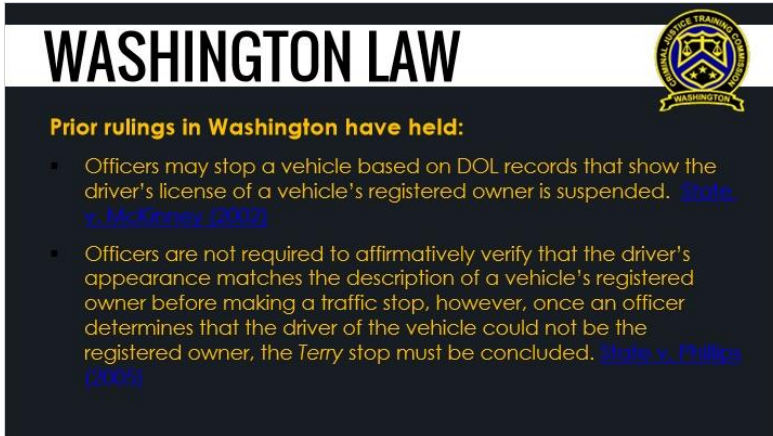
WASHINGTON LAW



This case was analyzed under the federal constitution's 4th Amendment, but its ruling and analysis is consistent with Washington caselaw that has examined similar issues under the framework of Article 1, Section 7 of the WA State constitution.

This case was analyzed under the federal constitution's 4th Amendment, but its ruling and analysis is consistent with Washington caselaw that has examined similar issues under the framework of Article 1, Section 7 of the WA State constitution.

2.17 WASHINGTON LAW



WASHINGTON LAW

Prior rulings in Washington have held:

- Officers may stop a vehicle based on DOL records that show the driver's license of a vehicle's registered owner is suspended. [State v. McKinney \(2002\)](#)
- Officers are not required to affirmatively verify that the driver's appearance matches the description of a vehicle's registered owner before making a traffic stop, however, once an officer determines that the driver of the vehicle could not be the registered owner, the *Terry* stop must be concluded. [State v. Phillips \(2005\)](#)

Prior rulings in Washington have held:

- Officers may stop a vehicle based on DOL records that show the driver's license of a vehicle's registered owner is suspended. [State v. McKinney \(2002\)](#)
- Officers are not required to affirmatively verify that the driver's appearance matches the description of a vehicle's registered owner before making a traffic stop, however, once an officer determines that the driver of the vehicle could not be the registered owner, the *Terry* stop must be concluded. [State v. Phillips \(2005\)](#)

3. STATE V. JOHNSON

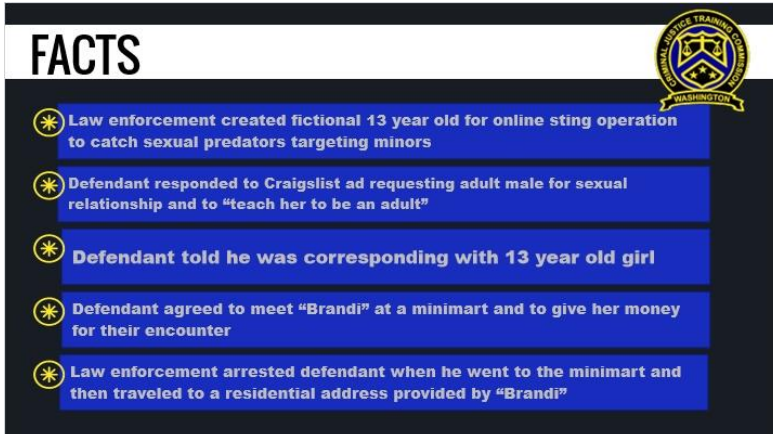
3.1 ENTRAPMENT; SEXUAL ABUSE OF A CHILD; STING OPERATION



State v. Johnson
No. 51923-2-II (January 28, 2020,
publication April 7, 2020)
Court of Appeals, Division II
ENTRAPMENT; SEXUAL ABUSE OF A CHILD;
STING OPERATION

State versus J.K.T.; Court of Appeals, Division 1

3.2 FACTS



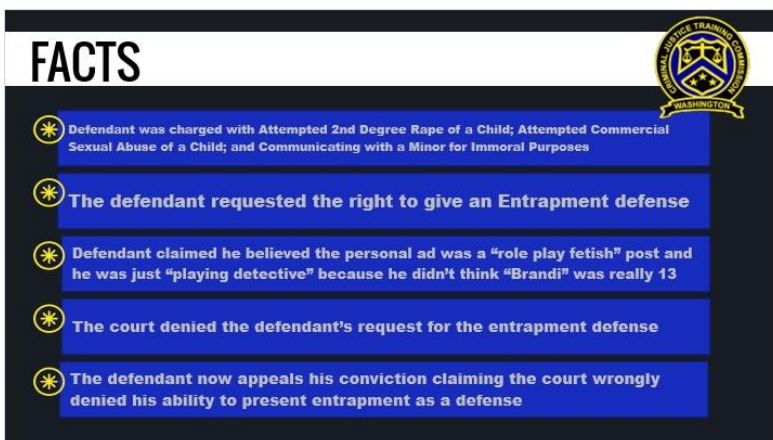
FACTS

- * Law enforcement created fictional 13 year old for online sting operation to catch sexual predators targeting minors
- * Defendant responded to Craigslist ad requesting adult male for sexual relationship and to “teach her to be an adult”
- * Defendant told he was corresponding with 13 year old girl
- * Defendant agreed to meet “Brandi” at a minimart and to give her money for their encounter
- * Law enforcement arrested defendant when he went to the minimart and then traveled to a residential address provided by “Brandi”

During an online sting to deter sexual abuse of minors, law enforcement placed a Craigslist “Casual Encounters” personals ad posing as a teenage girl looking for an adult male to engage in sexual behavior and “teach her to be an adult.” The defendant responded to the ad and suggested he was interested in the proposition.

Law enforcement provided an email address for “Brandi” and told the defendant she was 13 years old. The defendant responded with sexually explicit messages and arranged to meet with “Brandi” at a minimart near her home. He also agreed to “Brandi’s” request for money for the encounter. When the defendant arrived at the minimart, “Brandi” directed him to a house nearby. The defendant was arrested as he traveled from the minimart to the residential address.

3.3 FACTS



FACTS

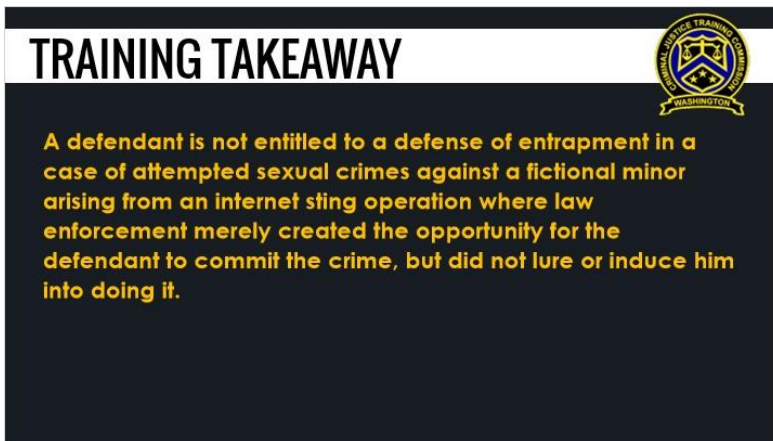
- * Defendant was charged with Attempted 2nd Degree Rape of a Child; Attempted Commercial Sexual Abuse of a Child; and Communicating with a Minor for Immoral Purposes
- * The defendant requested the right to give an Entrapment defense
- * Defendant claimed he believed the personal ad was a “role play fetish” post and he was just “playing detective” because he didn’t think “Brandi” was really 13
- * The court denied the defendant’s request for the entrapment defense
- * The defendant now appeals his conviction claiming the court wrongly denied his ability to present entrapment as a defense

The defendant was charged with Attempted 2nd Degree Rape of a Child, Attempted Commercial Sexual Abuse of a Minor, and Communication with a Minor for Immoral Purposes. He requested


that the jury be instructed on the entrapment defense, claiming that he thought the post was a “role play fetish” post, and he was just “playing a little detective” because he didn’t think “Brandi” was actually 13 years old.

The court denied his request for an entrapment defense. The defendant was convicted. He now appeals claiming the court improperly denied his entrapment defense, as well as on claims relating to alleged ineffectiveness of counsel and community custody restrictions on his internet usage.

3.4 TRAINING TAKEAWAY



TRAINING TAKEAWAY




A defendant is not entitled to a defense of entrapment in a case of attempted sexual crimes against a fictional minor arising from an internet sting operation where law enforcement merely created the opportunity for the defendant to commit the crime, but did not lure or induce him into doing it.

A defendant is not entitled to a defense of entrapment in a case of attempted sexual crimes against a fictional minor arising from an internet sting operation where law enforcement merely created the opportunity for the defendant to commit the crime, but did not lure or induce him into doing it.

3.5 TRAINING TAKEAWAY

TRAINING TAKEAWAY




The defendant's burden isn't met, and therefore he isn't entitled to an affirmative defense of entrapment, just because the State didn't affirmatively prove that the defendant had a predisposition to commit crimes against children.

The defendant's burden isn't met, and therefore he isn't entitled to an affirmative defense of entrapment, just because the State didn't affirmatively prove that the defendant had a predisposition to commit crimes against children.

3.6 AFFIRMATIVE DEFENSE

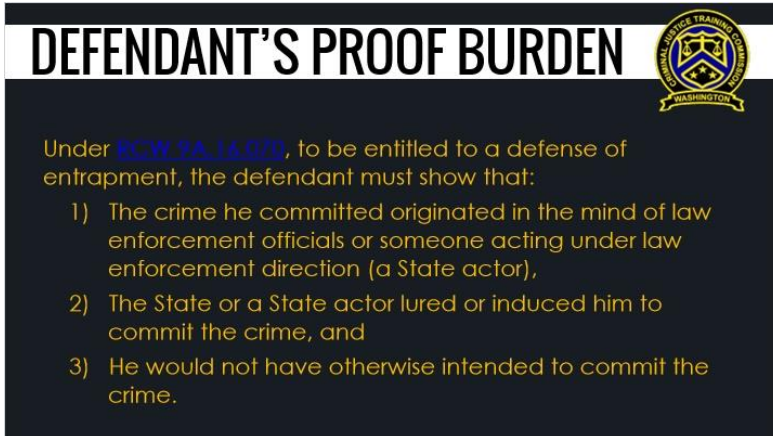
AFFIRMATIVE DEFENSE



Entrapment is an **affirmative defense** which means it is the **defendant's burden** to show by a preponderance of the evidence that he is entitled to have it given to the jury as a means of defending himself against culpability for the crime he committed.

Entrapment is an affirmative defense which means it is the **defendant's burden** to show by a preponderance of the evidence that he is entitled to have it given to the jury as a means of defending himself against culpability for the crime he committed.

3.7 DEFENDANT'S BURDEN



DEFENDANT'S PROOF BURDEN

Under [RCW 9A.16.070](#), to be entitled to a defense of entrapment, the defendant must show that:

- 1) The crime he committed originated in the mind of law enforcement officials or someone acting under law enforcement direction (a State actor),
- 2) The State or a State actor lured or induced him to commit the crime, and
- 3) He would not have otherwise intended to commit the crime.

Under [RCW 9A.16.070](#), to be entitled to a defense of entrapment, the defendant must show that:

- 1)The crime he committed originated in the mind of law enforcement officials or someone acting under law enforcement direction (a State actor),
- 2)The State or a State actor lured or induced him to commit the crime, and
- 3)He would not have otherwise intended to commit the crime.

3.8 ENTRAPMENT & LURING



ENTRAPMENT & LURING

An entrapment defense is **NOT** justified where law enforcement merely provided the defendant an **OPPORTUNITY** to commit a crime.

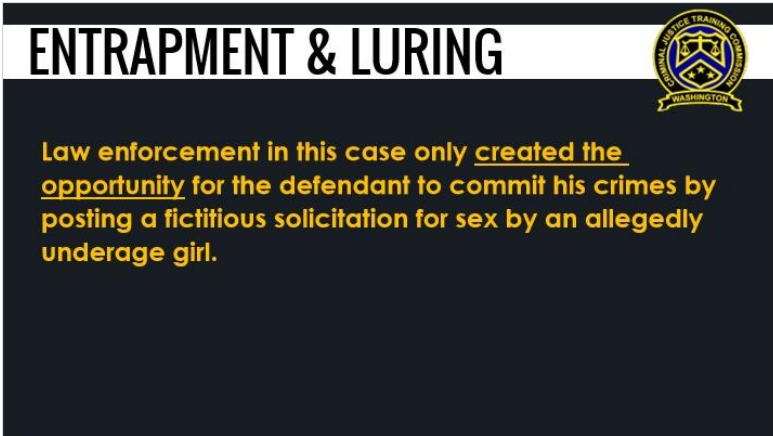
An entrapment defense is NOT justified where law enforcement merely provided the defendant an OPPORTUNITY to commit a crime.

- Law enforcement in this case created the opportunity for the defendant to commit his crimes by posting a fictitious solicitation for sex by an allegedly underage girl.
- They didn't initiate contact with the defendant or force him in any way to respond to the

Craigslist ad.

- Continued conversation to facilitate a meet up was not unjustly luring the defendant to act. He committed the crimes of his own will.

3.9 ENTRAPMENT & LURING

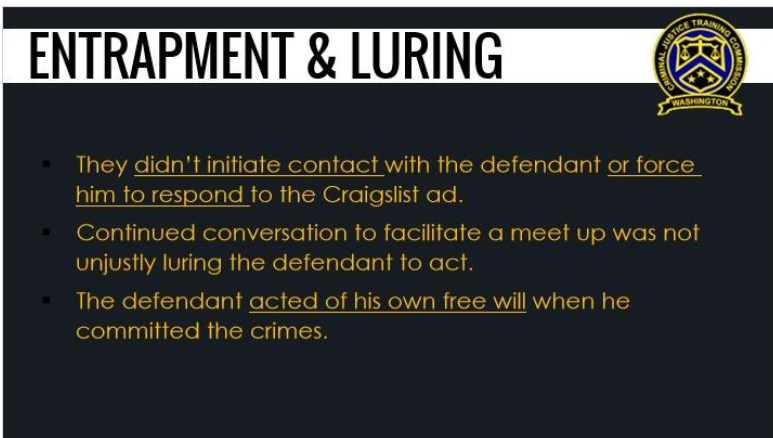


ENTRAPMENT & LURING

Law enforcement in this case only created the opportunity for the defendant to commit his crimes by posting a fictitious solicitation for sex by an allegedly underage girl.

Law enforcement in this case only created the opportunity for the defendant to commit his crimes by posting a fictitious solicitation for sex by an allegedly underage girl.

3.10 ENTRAPMENT & LURING



ENTRAPMENT & LURING

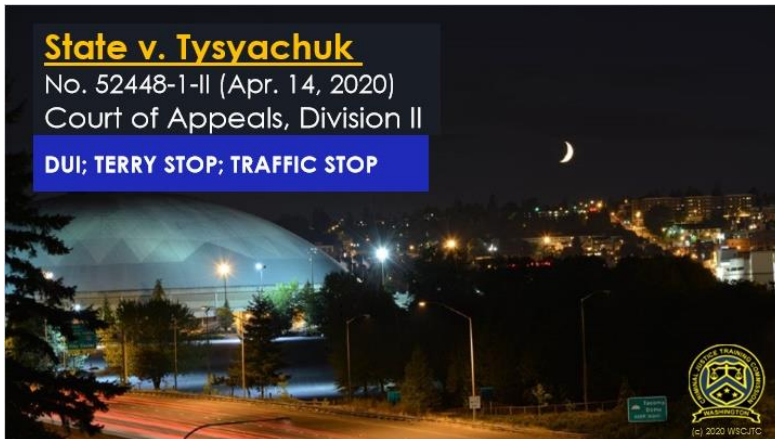
- They didn't initiate contact with the defendant or force him to respond to the Craigslist ad.
- Continued conversation to facilitate a meet up was not unjustly luring the defendant to act.
- The defendant acted of his own free will when he committed the crimes.

Law enforcement in this case only created the opportunity for the defendant to commit his crimes by posting a fictitious solicitation for sex by an allegedly underage girl.

- They didn't initiate contact with the defendant or force him to respond to the Craigslist ad.
- Continued conversation to facilitate a meet up was not unjustly luring the defendant to act.
- The defendant acted of his own free will when he committed the crimes.

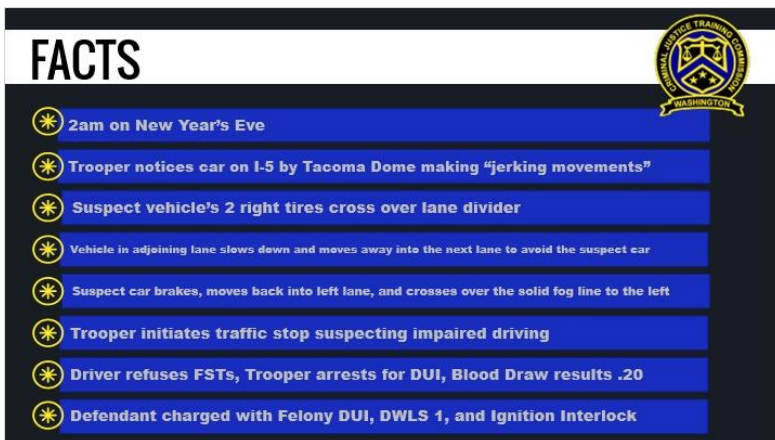
4. STATE V. TYSYACHUK

4.1 DUI; TERRY STOP; TRAFFIC STOP



State versus J.K.T.; Court of Appeals, Division 1

4.2 FACTS



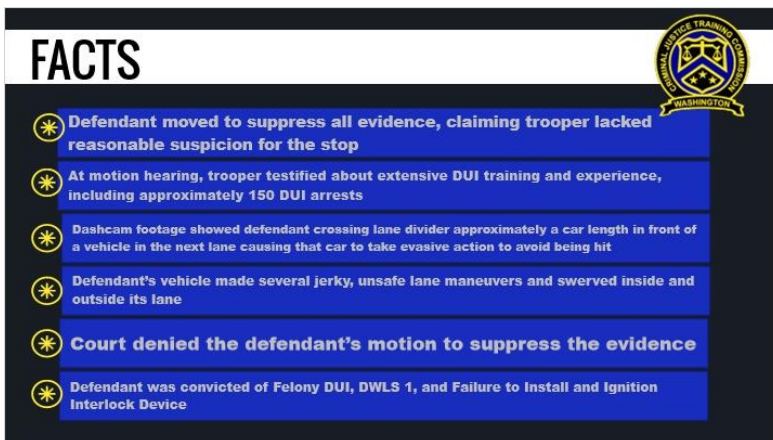
At nearly 2am on New Year's Eve, a trooper observed a car driving in the far-left lane on I-5 making "jerking movements." He observed the vehicle's two right tires cross over the lane divider to the right and saw a vehicle in the adjoining lane slow down and move away into the next lane. The suspect car braked, moved back into the left lane, and crossed over the solid fog line to the left.

The trooper initiated a traffic stop because he felt the driver was not driving safely, and that the swerving and failure to maintain straight travel in his lane was consistent with someone driving under the influence.

The trooper noted the driver shows signs of intoxication during their contact, and he asked the driver to step out of his vehicle and perform field sobriety tests. The driver refused. The trooper placed the driver under arrest for DUI and transported him to the hospital for a blood draw. The results later came back indicating a blood alcohol level of .20.

The driver had three or more prior DUI convictions and was charged with Felony DUI, DWLS 1st Degree, and Failure to Install an Ignition Interlock Device.

4.3 FACTS



FACTS

- * Defendant moved to suppress all evidence, claiming trooper lacked reasonable suspicion for the stop
- * At motion hearing, trooper testified about extensive DUI training and experience, including approximately 150 DUI arrests
- * Dashcam footage showed defendant crossing lane divider approximately a car length in front of a vehicle in the next lane causing that car to take evasive action to avoid being hit
- * Defendant's vehicle made several jerky, unsafe lane maneuvers and swerved inside and outside its lane
- * Court denied the defendant's motion to suppress the evidence
- * Defendant was convicted of Felony DUI, DWLS 1, and Failure to Install and Ignition Interlock Device


The defendant filed a motion to suppress the evidence on the basis that the trooper lacked reasonable suspicion on which to base the traffic stop. At the motion hearing, the trooper testified about his extensive DUI training and experience, which included several hundred DUI investigations which led to approximately 150 DUI arrests.

Footage from the Trooper's dashcam was admitted showing the defendant's car crossing the lane divider approximately a car length in front of a vehicle in the right lane. That vehicle could be seen signaling and moving to the far-right lane as the defendant's car moved back into his own lane, braked, and then crossed the fog lane to the left. The court's motion findings characterized the defendant's driving as consisting of "making several jerky, unsafe lane maneuvers which brought [the defendant's car] out of its lane and into the lane to the right" and "swerving inside and outside of its lane, nearly causing a collision" with another vehicle, and requiring that vehicle's driver to take evasive action to avoid a collision.

The court denied the defendant's motion to suppress the evidence. The defendant was convicted at trial of Felony DUI, Driving While License Suspended in the 1st Degree, and Failure to Install an Ignition Interlock Device. He appeals his convictions. This summary will focus on the defendant's claim that the traffic stop was not reasonably justified.

4.4 TRAINING TAKEAWAY

TRAINING TAKEAWAY




There was sufficient reasonable suspicion to conduct a warrantless stop to investigate whether a driver was engaged in criminal activity where the totality of the circumstances included:

- The jerky and swerving nature of the defendant's driving;
- The trooper's training and experience in the detection of impaired driving;
- The trooper's belief that the defendant's driving was consistent with impairment; and
- The fact that the driver potentially posed a danger to another driver.

There was sufficient reasonable suspicion to conduct a warrantless stop to investigate whether a driver was engaged in criminal activity where the totality of the circumstances included the jerky and swerving nature of the defendant's driving; the trooper's training and experience in the detection of impaired driving; the trooper's belief that the defendant's driving was consistent with impairment; and the fact that the driver potentially posed a danger to another driver on the roadway.

4.5 TERRY STOP REVIEW

TERRY STOP REVIEW



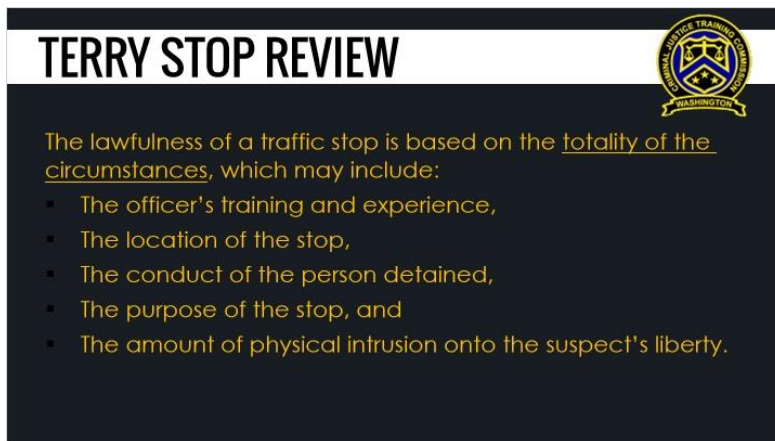
A brief, investigative detention of a person (a *Terry* stop) may be made without a warrant where the officer has specific and articulable facts on which to form reasonable suspicion of criminal activity or a traffic infraction.

[State v. Chacon Amadio](#)

A brief, investigative detention of a person (*Terry* stop) may be made without a warrant where the officer has specific and articulable facts on which to form reasonable suspicion of criminal activity or a traffic infraction. State v. Chacon Arreola

The lawfulness of a traffic stop is based on the totality of the circumstances, which includes the officer's training and experience, the location of the stop, the conduct of the person detained, the purpose of the stop, and the amount of physical intrusion onto the suspect's liberty.

4.6 TERRY STOP REVIEW

A graphic with a dark blue background and white text. The title "TERRY STOP REVIEW" is in large, bold, white capital letters. To the right is a circular logo for the Washington State Criminal Justice Training Commission, featuring a scale of justice and the text "WASHINGTON STATE CRIMINAL JUSTICE TRAINING COMMISSION". Below the title, the text reads: "The lawfulness of a traffic stop is based on the totality of the circumstances, which may include:" followed by a bulleted list of five factors.

TERRY STOP REVIEW

The lawfulness of a traffic stop is based on the totality of the circumstances, which may include:


- The officer's training and experience,
- The location of the stop,
- The conduct of the person detained,
- The purpose of the stop, and
- The amount of physical intrusion onto the suspect's liberty.

A brief, investigative detention of a person (*Terry* stop) may be made without a warrant where the officer has specific and articulable facts on which to form reasonable suspicion of criminal activity or a traffic infraction. State v. Chacon Arreola

The lawfulness of a traffic stop is based on the totality of the circumstances, which includes the officer's training and experience, the location of the stop, the conduct of the person detained, the purpose of the stop, and the amount of physical intrusion onto the suspect's liberty.

4.7 TERRY STOP REVIEW

TERRY STOP REVIEW



An officer can rely on his or her experience to identify seemingly innocent facts as suspicious. [State v. Moreno](#)

Officers are not required to rule out all possibilities of innocent behavior before making a stop.

An officer can rely on his or her experience to identify seemingly innocent facts as suspicious. [State v. Moreno](#)

Officers are not required to rule out all possibilities of innocent behavior before making a stop.

4.8 TOTALITY OF THE CIRCUMSTANCES

“BAD DRIVING” AND TOTALITY



There is no arbitrary bright line rule saying that if a driver passes over a lane marking by a certain number of inches, or a set length of time, or a particular number of crosses, a traffic stop would be automatically justified.

The court considers all of the relevant evidence, weighing the facts under the totality of the circumstances.

There is no arbitrary bright line rule saying that if a driver passes over a lane marking by a certain number of inches, or a set length of time, or a particular number of crosses, a traffic stop would be automatically justified.

Instead the court considers all of the relevant evidence, weighing the facts under the totality

of the circumstances.

4.9 TOTALITY OF THE CIRCUMSTANCES



“BAD DRIVING” AND TOTALITY

Several previous Washington cases have examined different driving behaviors as the basis for conducting a traffic stop.

Several previous Washington cases have examined different driving behaviors as the basis for conducting a traffic stop.

4.10 TOTALITY OF THE CIRCUMSTANCES



“BAD DRIVING” AND TOTALITY

STATE V. PRADO


A brief, minor incursion over a lane divider where there was no traffic present and no danger to other drivers does not justify a traffic stop because [RCW 46.61.140\(1\)](#) allows for some minor lane incursions within the requirement that a vehicle be driven in a single lane “as nearly as practicable.”

In State v Prado, a brief, minor incursion over a lane divider where there was no traffic present and no danger to other drivers does not justify a traffic stop because [RCW 46.61.140\(1\)](#)

allows for some minor lane incursions within the requirement that a vehicle be driven in a single lane “as nearly as practicable.”

4.11 TOTALITY OF THE CIRCUMSTANCES

“BAD DRIVING” AND TOTALITY




STATE V. MCLEAN

A trooper's articulable observations of a defendant weaving from side to side within the left lane of travel and then crossing the fog line three times, along with testimony about his extensive training and experience in identifying and arresting more than 200 impaired drivers, supported a rational inference that there was a substantial possibility that the driver was DUI, which established a reasonable suspicion permitting the trooper the make a warrantless traffic stop.

In State v. McLean, a trooper's articulable observations of a defendant weaving from side to side within the left lane of travel and then crossing the fog line three times, along with testimony about his extensive training and experience in identifying and arresting more than 200 impaired drivers, supported a rational inference that there was a substantial possibility that the driver was DUI, which established a reasonable suspicion permitting the trooper the make a warrantless traffic stop.

4.12 TOTALITY OF THE CIRCUMSTANCES

“BAD DRIVING” AND TOTALITY



STATE V. JONES

Testimony that an officer stopped the driver after observing his vehicle pass over the fog line about an inch three times, each time correcting with a slow drift, where there were no other cars on the road at the time, did not justify a warrantless traffic stop where the officer didn't provide testimony about having extensive training and experience with DUI detection and investigation, or present other evidence that would indicate the officer made the stop based on a reasonable suspicion of criminal activity or suspected impaired driving.

In State v Jones, testimony that an officer stopped the driver after observing his vehicle pass over the fog line about an inch three times, each time correcting with a slow drift, where there were no other cars on the road at the time, did not justify a warrantless traffic stop where the officer didn't provide testimony about having extensive training and experience with DUI detection and investigation, or present other evidence that would indicate the

officer made the stop based on a reasonable suspicion of criminal activity or suspected impaired driving.

4.13 PRACTICE POINTER

BE DESCRIPTIVE



This case highlights the importance of using clear, detailed descriptions of the driving and other bases for stops.

In both written reports and testimony, you can make the difference between a stop being invalidated and the evidence being suppressed, or getting a conviction, by painting a full picture of what you observed.

- Discuss the full breadth of all elements considered in forming your decisions to stop and/or arrest: observations, training and experience, reasonable inferences, etc.

This case highlights the importance of using clear, detailed descriptions of the driving and other bases for stops.

In both written reports and testimony, you can make the difference between a stop being invalidated and the evidence being suppressed, or getting a conviction, by painting a full picture of what you observed.

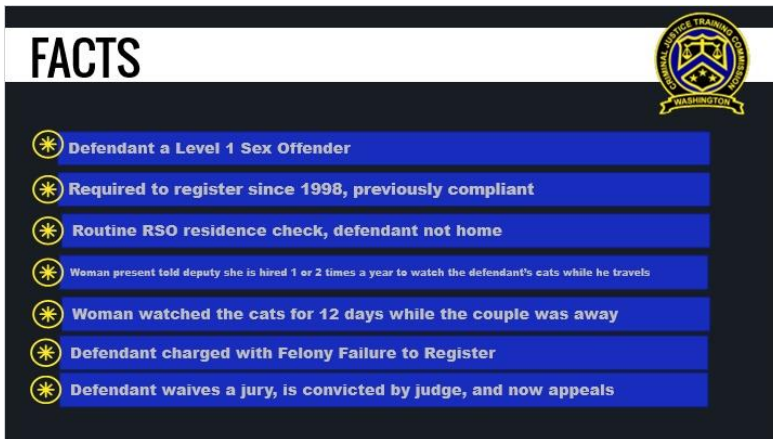
- Discuss the full breadth of all elements considered in forming your decisions to stop and/or arrest: observations, training and experience, reasonable inferences, etc.

5. STATE V. CATHERS

5.1 FAILURE TO REGISTER; SEX OFFENDER; FIXED ADDRESS



5.2 FACTS



FACTS

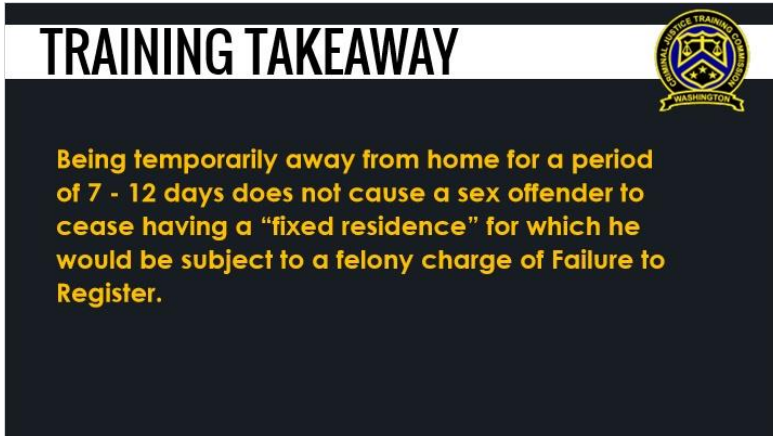
- * Defendant a Level 1 Sex Offender
- * Required to register since 1998, previously compliant
- * Routine RSO residence check, defendant not home
- * Woman present told deputy she is hired 1 or 2 times a year to watch the defendant's cats while he travels
- * Woman watched the cats for 12 days while the couple was away
- * Defendant charged with Felony Failure to Register
- * Defendant waives a jury, is convicted by judge, and now appeals

Defendant is a Level 1 Sex Offender. He first registered in Klickitat County in 1998 and has been compliant with his registration requirements since that time.

On an annual residential status check pursuant to the defendant's Level 1 RSO status, a deputy went to the defendant's registered address. He found no one home and left a business card. The following day, the defendant was again not at the residence when the deputy went to check. The deputy spoke to a woman present who stated that she is a friend of the defendant and his partner, and the couple hires her once or twice a year to watch their cats when they travel. The woman watched the cats for a 12-day period.

The State later charged the defendant with Felony Failure to Register as a Sex Offender based on the fact that he was "gone from his residence" between 7 and 12 days. The defendant waived his right to a jury, and the judge found him guilty as charged. He now appeals that conviction.

5.3 TRAINING TAKEAWAY

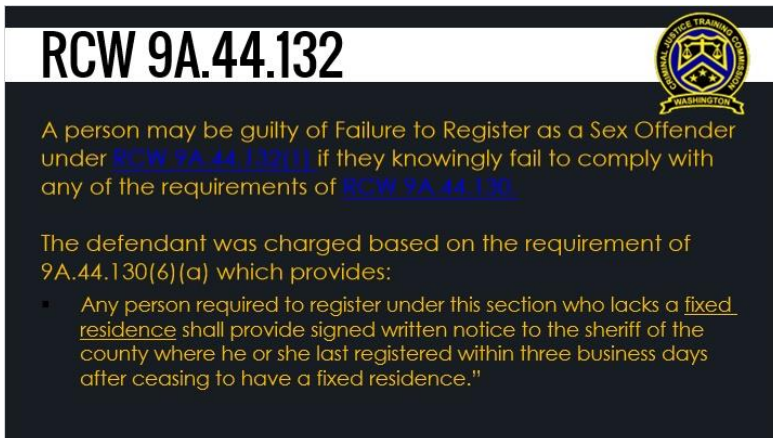


TRAINING TAKEAWAY

Being temporarily away from home for a period of 7 - 12 days does not cause a sex offender to cease having a "fixed residence" for which he would be subject to a felony charge of Failure to Register.

Being temporarily away from home for a period of 7 - 12 days does not cause a sex offender to cease having a "fixed residence" for which he would be subject to a felony charge of Failure to Register.

5.4 FAILURE TO REGISTER RCW 9A.44.132



RCW 9A.44.132

A person may be guilty of Failure to Register as a Sex Offender under [RCW 9A.44.132\(1\)](#) if they knowingly fail to comply with any of the requirements of [RCW 9A.44.130](#).

The defendant was charged based on the requirement of 9A.44.130(6)(a) which provides:


- Any person required to register under this section who lacks a fixed residence shall provide signed written notice to the sheriff of the county where he or she last registered within three business days after ceasing to have a fixed residence."

A person may be guilty of Failure to Register as a Sex Offender under [RCW 9A.44.132\(1\)](#) if they knowingly fail to comply with any of the requirements of [RCW 9A.44.130](#).

The defendant was charged based on the requirement of 9A.44.130(6)(a) which provides:

- Any person required to register under this section who lacks a fixed residence shall provide signed written notice to the sheriff of the county where he or she last registered within three business days after ceasing to have a fixed residence."

5.5 TRAINING TAKEAWAY



FIXED RESIDENCE

A **“fixed residence”** is a building that a person lawfully and habitually uses as living quarters a majority of the week. [RCW 9A.44.128](#)

“Uses as a living quarters” means to conduct activities consistent with the common understanding of residing, such as sleeping; eating; keeping personal belongings; receiving mail; and paying utilities, rent, or mortgage.

A “fixed residence” is a building that a person lawfully and habitually uses as living quarters a majority of the week. [RCW 9A.44.128](#)

“Uses as a living quarters” means to conduct activities consistent with the common understanding of residing, such as sleeping; eating; keeping personal belongings; receiving mail; and paying utilities, rent, or mortgage.

5.6 TRAINING TAKEAWAY



ALTERNATIVE FIXED RESIDENCES

A **motor home, travel trailer, camper, or boat** may qualify as a residence if it's primarily kept at one location with a physical address, and the location is either owned or rented by the person or used with the permission of the owner or renter.


A **shelter program** designed to provide temporary living accommodations for those experiencing homelessness may also be considered a fixed residence if the program provides the offender with a personally assigned living space in which they are permitted to store personal belongings.

A **motor home, travel trailer, camper, or boat** may qualify as a residence if it is primarily kept at one location with a physical address, and the location is either owned or rented by the person or used with the permission of the owner or renter.

A **shelter program** designed to provide temporary living accommodations for those experiencing homelessness may also be considered a fixed residence if the program provides the offender with a personally assigned living space in which they are permitted to

store personal belongings.

5.7 HABITUAL USE



HABITUAL USE

For a building to be a fixed residence, the statute requires that the use as a living quarters is both lawful and habitual.

- A person who uses a building as his living quarters, yet is occasionally away for one or two weeks, still "habitually" lives there a majority of the week because he is consistently and usually there.
- The State's argument that the defendant no longer had a fixed residence because he didn't use his living quarters for the majority of ONE week isn't consistent with the statute's focus on habitual use.

For a building to be a fixed residence, the statute requires that the use as a living quarters is both lawful and habitual.

A person who uses a building as his living quarters, yet is occasionally away for one or two weeks, still "habitually" lives there a majority of the week because he is consistently and usually there.

- The State's argument that the defendant no longer had a fixed residence because he didn't use his living quarters for the majority of ONE week isn't consistent with the statute's focus on habitual use.

5.8 TEMPORARILY AWAY



AWAY VERSUS RARELY THERE

Being temporarily away from one's fixed residence for several days, where there are no indicators that the person is moving or otherwise evading registration requirements, isn't the same things as listing an address but never or rarely using it – behavior that would support a charge of Failing to Register.

The defendant's conviction for Failing to Register as a Sex Offender is reversed.

Being temporarily away from one's fixed residence for several days, where there are no indicators that the person is moving or otherwise evading registration requirements, isn't the

same things as listing an address but never or rarely using it - behavior that would support a charge of Failing to Register.

The defendant's conviction for Failing to Register as a Sex Offender is reversed.

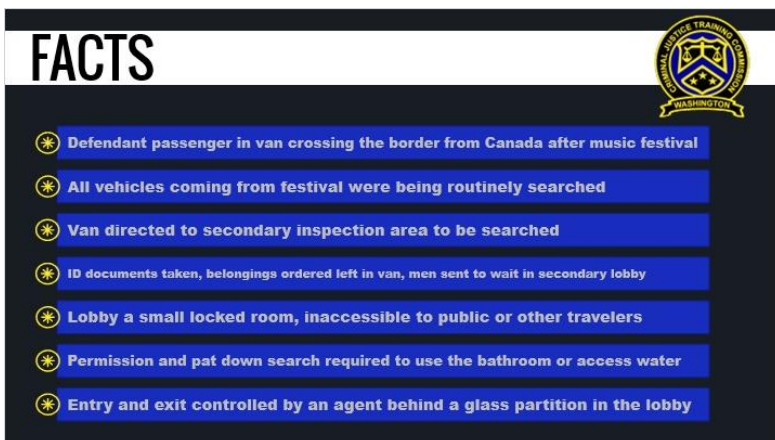
6. STATE V. ESCALANTE

6.1 MIRANDA; BORDER CROSSING; CHECKPOINT



State versus J.K.T.; Court of Appeals, Division 1

6.2 TRAINING TAKEAWAY



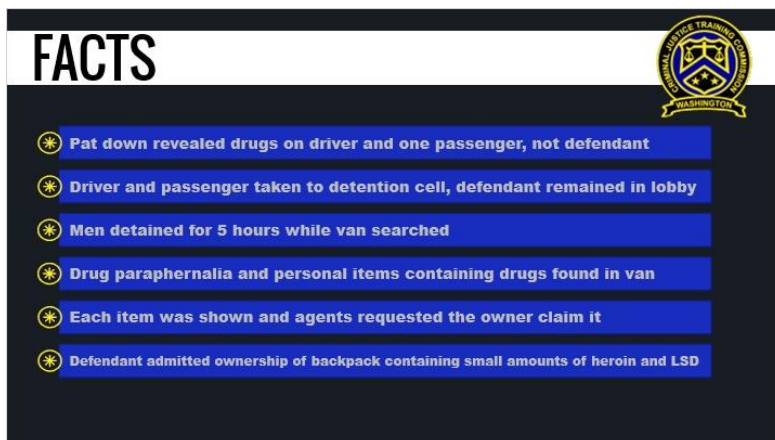
FACTS

- * Defendant passenger in van crossing the border from Canada after music festival
- * All vehicles coming from festival were being routinely searched
- * Van directed to secondary inspection area to be searched
- * ID documents taken, belongings ordered left in van, men sent to wait in secondary lobby
- * Lobby a small locked room, inaccessible to public or other travelers
- * Permission and pat down search required to use the bathroom or access water
- * Entry and exit controlled by an agent behind a glass partition in the lobby

Returning home from a music festival in Canada, the defendant and three friends were stopped at the Frontier border crossing by agents who were searching all vehicles coming from the festival as part of a drug enforcement operation.

After telling the first agent that they were coming from the festival, the party was directed to a secondary inspection area. Border patrol agents took the mens' identity documents and directed them to leave their belongings in the van and wait in the secondary lobby - an 11x14 foot locked room, inaccessible to the public or other travelers. The entrance was controlled by an agent sitting behind a glass partition, and anyone inside the secured lobby was unable to use the bathroom or access water without permission from an agent and undergoing a pat-down search.

6.3 TRAINING TAKEAWAY



FACTS

- * Pat down revealed drugs on driver and one passenger, not defendant
- * Driver and passenger taken to detention cell, defendant remained in lobby
- * Men detained for 5 hours while van searched
- * Drug paraphernalia and personal items containing drugs found in van
- * Each item was shown and agents requested the owner claim it
- * Defendant admitted ownership of backpack containing small amounts of heroin and LSD

WASHINGTON STATE CRIMINAL JUSTICE TRAINING COMMISSION

During a pat down, agents found drugs on the driver and one passenger, but not on the defendant. Those two were taken to detention cells while the defendant and other passenger remained held in the lobby for 5 hours while the van was searched.

Agents then confronted the men with drug paraphernalia and personal items containing drugs found in the search of the van. Without giving Miranda warnings, the agents confronted the men with each item and asked who owned it. The defendant admitted he owned the backpack in which small amounts of heroin and LSD were found.

6.4 TRAINING TAKEAWAY

FACTS




- * US Attorney declined prosecution, local law enforcement called
- * Defendant formally arrested and given Miranda
- * Charged with possession of heroin and LSD
- * Moved to suppress statements about ownership of the backpack
- * Motion denied, defendant convicted
- * Court of Appeals affirmed denial of the motion
- * Case now before the WA Supreme Court to rule on whether Miranda required

The US Attorney's office declined to prosecute because of the small quantity of drugs, so the border patrol agents requested local law enforcement respond. The defendant was then formally arrested and given Miranda warnings. He was charged with possession of heroin and LSD.

The defendant filed a motion to suppress the statements made about ownership of the backpack because they were made during an in-custody interrogation without Miranda warnings. The motion was denied, and he was convicted. The denial of the motion was affirmed by the Court of Appeals, and the issue of whether Miranda warnings were required before asking the defendant about his ownership of the backpack containing drugs is now being considered by the Supreme Court.

6.5 TRAINING TAKEAWAY

TRAINING TAKEAWAY



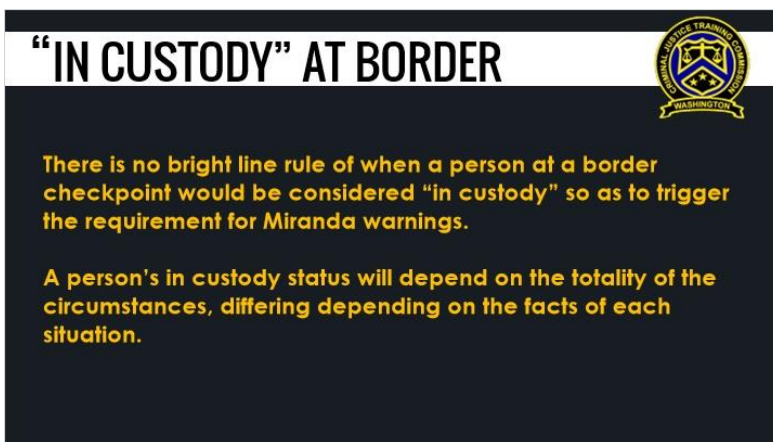
A person routed to a secondary inspection area away from the general border checkpoint, whose identity documents were confiscated by law enforcement, who was detained for 5 hours in a small locked lobby inaccessible to the public or other travelers after authorities arrested the driver of the van in which he was traveling, was "in custody" when agents confronted him about the drugs they found and their suspicions of him, and should have been given *Miranda* warnings.

Because the agents failed to give the suspect *Miranda* warnings before they questioned him in this "in custody" situation, the statements that resulted from the unwarned interrogation are inadmissible.

A person routed to a secondary inspection area away from the general border checkpoint, whose identity documents were confiscated by law enforcement, who was detained for 5 hours in a small locked lobby inaccessible to the public or other travelers after authorities arrested the driver of the van in which he was traveling, was “in custody” when agents confronted him about the drugs they found and their suspicions of him, and should have been given *Miranda* warnings.

Because the agents failed to give the suspect *Miranda* warnings before they questioned him in this “in custody” situation, the statements that resulted from the unwarned interrogation are inadmissible.

6.6 IN CUSTODY AT CHECKPOINT



“IN CUSTODY” AT BORDER

There is no bright line rule of when a person at a border checkpoint would be considered “in custody” so as to trigger the requirement for *Miranda* warnings.


A person’s in custody status will depend on the totality of the circumstances, differing depending on the facts of each situation.

There is no bright line rule of when a person at a border checkpoint is “in custody” to trigger the requirement for *Miranda* warnings.

A person’s in custody status will depend on the totality of the circumstances, differing depending on the facts of each situation.

6.7 MIRANDA BASICS

MIRANDA BASICS



The 5th Amendment grants individuals the right to be free from compelled self-incrimination, preventing any government agent from interrogating a person in custody without first warning them of their right to remain silent and their right to counsel.

If Miranda warnings are not given prior to an in-custody interrogation, any incriminating statements that result may not be used as evidence in a criminal prosecution.


[Miranda v. Arizona \(1966\)](#)

The 5th Amendment grants individuals the right to be free from compelled self-incrimination, preventing any government agent from interrogating a person in custody without first warning them of their right to remain silent and to counsel.

If Miranda warnings are not given prior to an in-custody interrogation, any incriminating statements that result may not be used as evidence in a criminal prosecution.

6.8 IN CUSTODY AT CHECKPOINT

MIRANDA BASICS



In deciding *Miranda*, the Court recognized that being interrogated while in custody subjects a person to inherently compelling pressures that work to undermine their will to resist.

Miranda is triggered when a person is determined to be:
(1) in custody, and (2) being interrogated.

In deciding *Miranda*, the Court recognized that being interrogated while in custody subjects a person to inherently compelling pressures that work to undermine their will to resist.

Miranda is triggered when a person is determined to be:
(1) in custody, and (2) being interrogated.

6.9 IN CUSTODY AT CHECKPOINT



MIRANDA BASICS - INTERROGATION



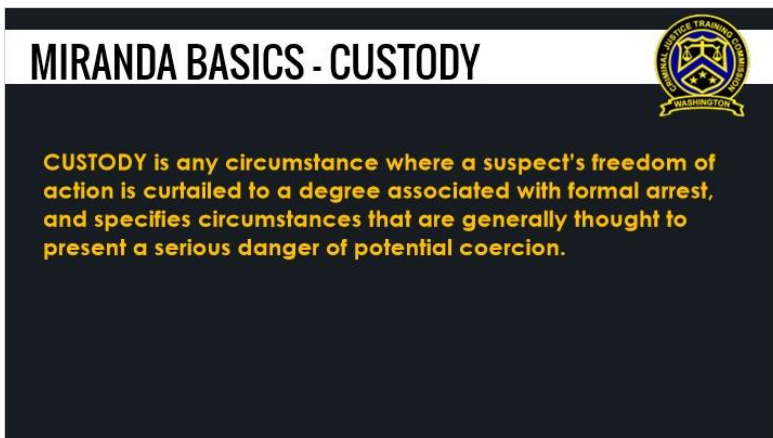
Interrogation is questioning or conduct by the police that is reasonably likely to elicit an incriminating response from the suspect.

Both parties here agree that the defendant was being interrogated.


Interrogation is questioning or conduct by the police that is reasonable likely to elicit an incriminating response from the suspect.

Both parties here agree that the defendant was being interrogated.

6.10 IN CUSTODY AT CHECKPOINT



MIRANDA BASICS - CUSTODY




CUSTODY is any circumstance where a suspect's freedom of action is curtailed to a degree associated with formal arrest, and specifies circumstances that are generally thought to present a serious danger of potential coercion.

CUSTODY is any circumstance where a suspect's freedom of action is curtailed to a degree associated with formal arrest and specifies circumstances that are generally thought to present a serious danger of potential coercion.

6.11 IN CUSTODY AT CHECKPOINT

MIRANDA BASICS - CUSTODY



Even a scenario that would be considered a seizure under the 4th amendment - where a reasonable person in the same situation wouldn't feel free to leave or otherwise terminate the contact with law enforcement - may not always be considered "in custody" for purposes of *Miranda*.


In custody is an objective question that asks how a reasonable person in the suspect's position would have understood the circumstances.

Even a scenario that would be considered a seizure under the 4th amendment - where a reasonable person in the same situation wouldn't feel free to leave or otherwise terminate the contact with law enforcement - may not always be considered "in custody" for purposes of *Miranda*.

In custody is an objective question that asks how a reasonable person in the suspect's position would have understood the circumstances.

6.12 IN CUSTODY AT CHECKPOINT

MIRANDA BASICS - CUSTODY



The totality of the circumstances determines whether a reasonable person in the suspect's position would feel restrained to the degree associated with formal arrest.

Considerations may include:

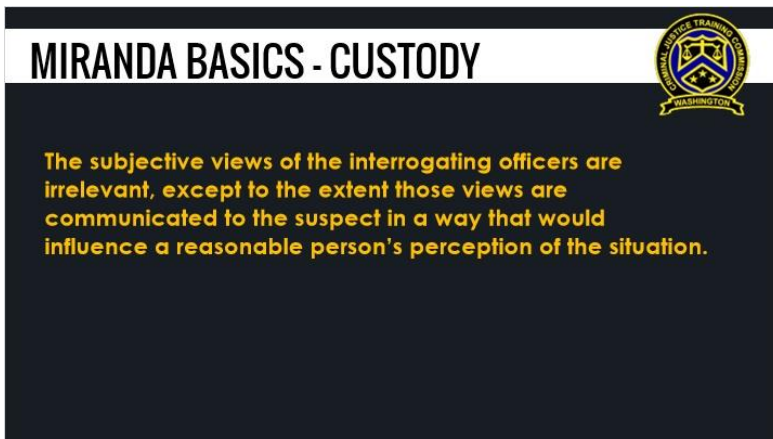
- Nature of the surroundings,
- Extent of police control over the surroundings,
- Degree of physical restraint placed on the subject, and
- Duration and character of the questioning.

The totality of the circumstances determines whether a reasonable person in the suspect's position would feel restrained to the degree associated with formal arrest.

Considerations may include:

- Nature of the surroundings,
- Extent of police control over the surroundings,
- Degree of physical restraint placed on the subject, and
- Duration and character of the questioning.

6.13 IN CUSTODY AT CHECKPOINT

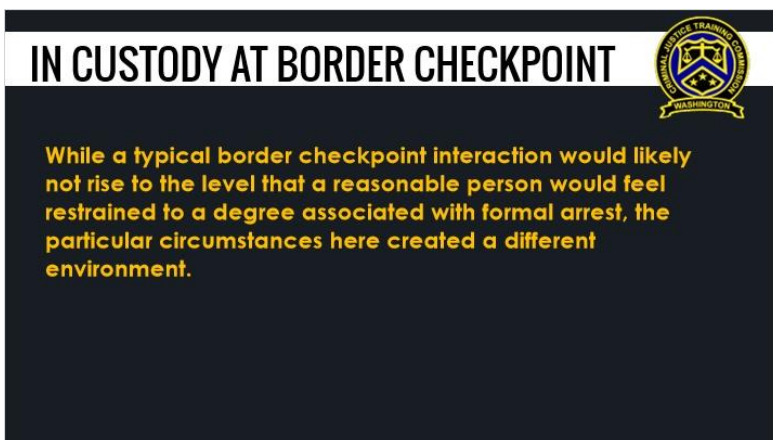


MIRANDA BASICS - CUSTODY

The subjective views of the interrogating officers are irrelevant, except to the extent those views are communicated to the suspect in a way that would influence a reasonable person's perception of the situation.

The subjective views of the interrogating officers are irrelevant, except to the extent those views are communicated to the suspect in a way that would influence a reasonable person's perception of the situation.

6.14 IN CUSTODY AT CHECKPOINT




IN CUSTODY AT BORDER CHECKPOINT

While a typical border checkpoint interaction would likely not rise to the level that a reasonable person would feel restrained to a degree associated with formal arrest, the particular circumstances here created a different environment.

While a typical border checkpoint interaction would likely not rise to the level that a reasonable person would feel restrained to a degree associated with formal arrest, the particular circumstances here created a different environment.

6.15 IN CUSTODY AT CHECKPOINT

IN CUSTODY AT BORDER CHECKPOINT



- The suspect was isolated from other travelers and the general public.
- He was held in a small, locked room.
- The detention lasted more than 5 hours before he was questioned.
- The driver of the van in which he had been riding had been arrested.
- His identity documents had been seized.


These factors would cause a reasonable person to feel as though they were in a circumstance mirroring formal arrest.

- The suspect was isolated from other travelers and the general public.
- He was held in a small, locked room.
- The detention lasted more than 5 hours before he was questioned.
- The driver of the van in which he had been riding had been arrested.
- His identity documents had been seized.

These factors would cause a reasonable person to feel as though they were in a circumstance mirroring formal arrest.

6.16 IN CUSTODY AT CHECKPOINT

IN CUSTODY AT BORDER CHECKPOINT



Isolating a suspect from the general public in a restricted, police-dominated environment in these circumstances is consistent with the scenarios under which the *Miranda* court held that a reasonable person would be vulnerable to feeling compelled to incriminate themselves against their will, and therefore giving Miranda warnings was necessary.

Isolating a suspect from the general public in a restricted, police-dominated environment in these circumstances is consistent with the scenarios under which the *Miranda* court held that a reasonable person would be vulnerable to feeling compelled to incriminate themselves against their will, and therefore giving Miranda warnings was necessary.