

LAW ENFORCEMENT DIGEST

April 2022



COVERING CASES PUBLISHED IN APRIL 2022

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Cases in the Law Enforcement Digest are briefly summarized, with emphasis placed on how the rulings may affect Washington law enforcement officers or influence future investigations and charges. Each month's Law Enforcement Digest covers court rulings issued by some or all of the following courts:

- **Washington Courts of Appeals.** The Washington Court of Appeals is the intermediate level appellate court for the state of Washington. The court is divided into three divisions. Division I is based in Seattle, Division II is based in Tacoma, and Division III is based in Spokane.
- **Washington State Supreme Court.** The Washington Supreme Court is the highest court in the judiciary of the U.S. state of Washington. The court is composed of a chief justice and eight justices. Members of the court are elected to six-year terms.
- **Federal Ninth Circuit Court of Appeals.** Headquartered in San Francisco, California, the United States Court of Appeals for the Ninth Circuit (in case citations, 9th Cir.) is a federal court of appeals that has appellate jurisdiction over the district courts in the western states, including Washington, Alaska, Arizona, California, Hawaii, Idaho, Montana, Nevada and Oregon.
- **United States Supreme Court:** The Supreme Court of the United States is the highest court in the federal judiciary of the United States of America.

TOPIC INDEX

- THE INEVITABLE DISCOVERY DOCTRINE
- STATE PREEMPTION OF LOCAL FIREARMS ORDINANCE
- PUBLIC DUTY DOCTRINE

CASES

1. United States v. Hylton, 21-10026 (April 5, 2022)
2. Bass v. City of Edmonds, 99596-6 (April 21, 2022)
3. Ghodsee v. City of Kent, 82897-5-I (April 18, 2022)

WASHINGTON LEGAL UPDATES

The following training publications are authored by Washington State legal experts and available for additional caselaw review:

- [Legal Update for WA Law Enforcement](#) authored by retired Assistant Attorney General, John Wasberg
- **Caselaw Update** - WA Association of Prosecuting Attorneys [[2018-2021](#)] | [[2022](#)]

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United States v. Hylton

No. 21-10026

UNITED STATES COURT OF APPEALS FOR

THE NINTH CIRCUIT

April 5, 2022

Facts Summary

TOPIC: THE INEVITABLE DISCOVERY DOCTRINE

In October of 2016, a masked man robbed a Citibank bank in Henderson, Nevada. During the robbery, he brandished a black handgun with brown grips and ejected an unspent round onto the bank floor. He then jumped over the counter and discharged a round into the floor next to a teller and ordered the teller to give him all the money in the drawers. He stole nearly \$70,000.00 and escaped in a midsize black SUV that looked like a Ford Escape. The man was described as a black male between 25 and 30 years old, between 5'10" and 6'5", and between 175lbs and 250lbs.

In December of 2016, police responded to a call that a vehicle was stopped in the middle of one of the busiest intersections in Las Vegas. When police arrived, they found Hylton non-responsive at the wheel of the vehicle. The officers reported smelling marijuana coming from the vehicle.

The officers knocked on the window and were able to wake Hylton. Hylton appeared disoriented and confused and there were pills stuck to his sweatshirt. The officers believed Hylton might be under the influence of marijuana or some other drug and instructed him to get out of the vehicle with his license and registration. Hylton got out of the car and reported that his driver's license and registration were in the back seat of the vehicle. Officer Hinkel could not find Hylton's driver's license or registration in the back seat. Officer Hinkel did find, in plain sight, a closed handgun case with a gun inside. Hinkel placed the gun in the patrol car and checked to see if it was stolen, which it was not. Hinkel continued to search for Hylton's driver's license and registration in the front seat but only found crushed pills and half a bottle of alcohol.

Officer Childers conducted a field sobriety test, which was standard procedure. Hylton failed

two of three tests and the officers were uncertain if Hylton was under the influence. The officers contacted their sergeant and the three decided to request a drug recognition expert (“DRE”) come to the scene.

While waiting for the DRE to arrive, the officers again asked Hylton for his driver's license and registration. Hylton claimed they were in the car, but the officers could not locate them. The officers asked Hylton for his name and date of birth and used that information to run a check on Hylton’s driver’s license, registration, insurance, open warrants, and criminal history. When the criminal history came back, it showed that Hylton was a felon. The officers arrested Hylton for being a felon in possession of a firearm and canceled the call for the DRE.

The gun confiscated from Hylton was a black handgun with brown wood grips. The ballistics from the gun matched the ballistics from the round fired by the bank robber in the October robbery. Hylton was charged and the gun was seized. Hylton was then released.

In January of 2017, the same Citibank branch was robbed by who appeared to be the same bank robber as before. This time, the robber brandished a silver revolver. The bank robber made off with nearly \$18,000.00 and escaped in a black Ford Escape.

Investigators searched for similar Ford Escapes registered to addresses associated with black males in the counties near the bank. The search yielded three matching vehicles, one of which was registered to Hylton’s girlfriend. Hylton’s girlfriend told investigators that Hylton was the only man with access to her car. Law enforcement executed a search warrant at both Hylton’s and his girlfriend’s residences. Hylton was arrested for bank robbery and indicted on two counts of bank robbery, two counts of use of a firearm during and in relation to the crimes of violence of the bank robberies, and one count of felon in possession of a firearm.

During his trial, Hylton moved to suppress the evidence resulting from the traffic stop, including the seized firearm. The district court denied this motion, holding that the officers did not reasonably prolong the traffic stop, and even if they had, the inevitable discovery doctrine applied.

Hylton appealed the district court's denial of his motion to suppress. Hylton argued that the appeals court was required to hold that the criminal history check was an unnecessary

prolongation of the stop and needed to be supported by independent reasonable suspicion.

The Ninth Circuit noted that **it can become unlawful to prolong a traffic stop beyond the time reasonably required to complete the mission of the stop.** It further explained, however, **that the reason for the criminal history check “stems from the mission of the stop itself,”** and is a **“negligibly burdensome precaution” necessary “to complete the stop safely.”** Thus, the court held, the officers needed no independent reasonable suspicion to perform the criminal history check.

The court added that, even if the criminal history check was an unreasonable extension of the duration of the traffic stop, the inevitable discovery doctrine did apply.

The inevitable discovery doctrine is an exception to the rule that a court must suppress evidence tainted by unlawful government conduct. It applies if, by “following routine procedures, the police would inevitably have uncovered the evidence.”

The appeals court noted that Hylton had conceded that the stop was lawful before any prolongation began. The district court had reasoned that *even* if the officers had returned the gun and ended the stop before the criminal history check came back, they would have learned Hylton was a felon mere moments later. At that time, the officers would have concluded that Hylton was a felon in possession of a gun and would have pulled him over again to seize the gun.

Hylton also appealed on the grounds that he believed the verdict was not supported by the evidence. Hylton argued that there wasn't enough evidence to prove his identity as the bank robber. The Ninth Circuit disagreed, concluding that a rational jury could have found that Hylton had committed both robberies.

In support of its conclusion, the court recounted the many pieces of evidence that tied Hylton to both crimes:

- Both robberies involved a black man using a similar looking vehicle to rob the same bank branch in the same manner.
- Multiple witnesses testified that the same person committed both robberies, based on the sound of his voice.

- The distinctive car used in the robberies only matched three addresses associated with black men near the bank, one of which was registered to Hylton’s girlfriend.
- Hylton’s girlfriend testified that Hylton was the only man that used her car.
- The gun used in the first robbery was found in Hylton’s possession during the traffic stop and seized by police.
- Hylton had the holster, owner’s manual, and ammunition for the gun in his house.
- After the gun was seized by police, the robber used a different gun in the second robbery.
- Hylton claimed to be a busy realtor, but he let phone calls go to voicemail during the robberies.
- Hylton paid past due bills a few hours after the first bank robbery.
- The police found money in Hylton’s house that was rubber banded consistent with a bank robbery.

The court concluded that there was ample evidence for any “rational trier of fact” to find that Hylton committed both bank robberies.

Training Takeaway

Criminal History Background Checks

A traffic violation justifies a police investigation of that violation. A routine traffic stop is more like a *Terry* stop than a formal arrest, and **it can violate the Fourth Amendment if it is prolonged beyond the time reasonably required to complete the mission of issuing a ticket for the violation.** The tolerable duration of a seizure is determined by the seizure’s mission. **In the context of a traffic stop, the mission is to address the traffic violation that warranted the stop and to attend to any related safety concerns.**

The government has a reasonable interest in officer safety during a traffic stop because such stops are especially fraught with danger to police officers, so **an officer may need to take certain negligibly burdensome precautions in order to complete their mission safely.**

The Ninth Circuit affirmed that a **criminal history check conducted during a traffic stop is a negligibly burdensome precaution necessary to complete the mission of the traffic stop safely. *No independent reasonable suspicion is necessary under the Fourth Amendment to perform the criminal history check.***

Inevitable Discovery Rule

The inevitable discovery rule is an exception to the Fourth Amendment doctrine that requires courts to suppress evidence obtained or tainted by unlawful government conduct. The Doctrine provides that **if, by following routine procedures without any misconduct, the police inevitably would have discovered the evidence, then the evidence will not be suppressed.**

[EXTERNAL LINK: View the Court Document](#)



Bass v. City of Edmonds
No. 99596-6
SUPREME COURT OF WASHINGTON
April 21, 2022

Facts Summary

TOPIC: STATE PREEMPTION OF LOCAL FIREARMS ORDINANCE

Following the Marysville Pilchuck High School shooting, the Edmonds City Council adopted Ordinance 4120, requiring residents to safely store their firearms while not in use. Under the storage provision Ordinance:

It shall be a civil infraction for any person to store or keep any firearm in any premises unless such a weapon is secured by a locking device, properly engaged so as to render such weapon inaccessible or unusable to any person other than the owner or other lawfully authorized user.

Notwithstanding the foregoing, for purposes of this section, such weapon shall be deemed lawfully stored or lawfully kept if carried by or under the control of the owner or other lawfully authorized user.

It shall be a civil infraction if any person knows or reasonably should know that a minor, an at-risk person, or a prohibited person is likely to gain access to a firearm belonging to or under the control of that person, and a minor, an at-risk person, or a prohibited person obtains the firearm.

Around the same time, Initiative 1639 was enacted by Washington voters. Among other things, this initiative criminalized unsafe storage of firearms. However, it did not go as far as the Edmonds ordinance because it did not “mandate how or where a firearm must be stored.”

Several plaintiffs challenged Edmonds’ ordinance as preempted by state law.

At trial, the City of Edmonds moved to dismiss the case arguing that the plaintiffs did not have “standing” to challenge the ordinance.

Note: To have standing, a party must show that (1) they have been “injured in fact,” meaning the injury is of a legally protected interest which is concrete and particularized, (2) that there is a causal connection between the injury and the conduct before the court, and (3) it is likely that a favorable decision by the court will redress the injury.

The trial court found that the plaintiffs did have standing to challenge the safe storage portion of the ordinance, but not the unauthorized access portion. The trial court concluded that the safe storage provision of the Edmonds ordinance was preempted by state law and granted summary judgment in favor of the plaintiffs on that portion of the ordinance. Both the City of Edmonds and the plaintiffs appealed.

On appeal, the court concluded that the plaintiffs had standing to challenge the entire ordinance and that it was preempted by state law. The appeals court granted summary judgment in favor of the plaintiffs on both provisions of the Edmonds ordinance. The City of Edmonds appealed to the Washington State Supreme Court, which granted review.

On review, the Supreme Court of Washington considered the issues of standing and preemption.

Standing

The City of Edmonds challenged plaintiffs’ standing to bring the case. Under the Declaratory Judgments act, **“a person ... whose rights, status or other legal relations are affected by a statute or municipal ordinance ... may have determined any question of construction or validity arising under the ... statute or ordinance ... and obtain a declaration of rights.”** To determine if the plaintiffs had standing, the court applied the common law test. Under the common law test, a person has standing if **(1) the interest they seek to protect is arguably within the zone of interests to be protected or regulated by the statute or constitutional guarantee in question,** and **(2) “the challenged action has caused injury in fact, economic or otherwise, to the party seeking standing.”**

The court pointed out that standing is not meant to be a high bar. Rather, it is intended to prevent a litigant from raising another’s legal right. The court found that the plaintiffs “plainly meet the first element of the common law test” because the plaintiffs own and store firearms. They are within the zone of interest regulated.

The City of Edmonds argued that to satisfy the second element of standing, plaintiffs needed to show “actual and concrete harm.” The court said this was sufficient, but not necessary. It was only necessary to show that the plaintiffs **could be charged with a civil infraction that carried a potentially heavy penalty. These consequences were enough to establish the injury-in-fact element of standing.**

The court concluded that the plaintiffs had standing to bring the challenge to the ordinance.

Preemption

The plaintiffs contended that both provisions of Edmonds’ ordinance were preempted by state law. On one hand, the court opined, “a state statute preempts an ordinance if the statute occupies the field or if the statute and the ordinance irreconcilably conflict.” On the other, “a statute will not be construed as taking away the power of a municipality to legislate unless this intent is clearly and expressly stated.” In the past, the court has found the intent to occupy a field may be implied by a statute or related statutes that may shed light on legislative intent. To determine whether there was an intent to occupy the field of firearms, the court looked to our state preemption statute (RCW 9.41.290), which reads in part:

The state of Washington hereby **fully occupies and preempts the entire field of firearms regulation within the boundaries of the state**, including the registration, licensing, possession, purchase, sale, acquisition, transfer, discharge, and transportation of firearms, or any other element relating to firearms or parts thereof, including ammunition and reloader components. Cities, towns, and counties or other municipalities may enact only those laws and ordinances relating to firearms that are specifically authorized by state law, as in [RCW 9.41.300](#), and are consistent with this chapter. Such local ordinances shall have the same penalty as provided for by state law. **Local laws and ordinances that are inconsistent with, more restrictive than, or exceed the requirements of state law shall not be enacted and are preempted and repealed**, regardless of the nature of the code, charter, or home rule status of such city, town, county, or municipality.

The legislature’s intent to occupy the entire field of firearms regulation is clear, but the court noted that there were some exceptions. Previous cases had established that a municipality could prohibit its employees from carrying concealed weapons while at work or regulate the possession of firearms in municipal convention centers. A municipality could also tax firearms

or ammunition or require a shooting facility to obtain an operating permit because these measures do not regulate firearms directly. **The types of laws that are preempted are those laws and ordinances of general application to the general public.**

The court reasoned that these cases established that [RCW 9.41.290](#) broadly preempts local ordinances that regulate firearms themselves, but not necessarily ordinances that have an incidental effect on the use and enjoyment of firearms or exercises of municipal authority that do not establish rules of general application to the public.

The court concluded that the legislature plainly meant to broadly preempt local lawmaking concerning firearms except where authorized by statute. The City of Edmonds was acting in its role as a regulator, not a proprietor or employer, when it passed Ordinance 4120. It did so without any explicit or implied authorization from the state. Accordingly, the court held that the ordinance was preempted by state law.

Training Takeaway

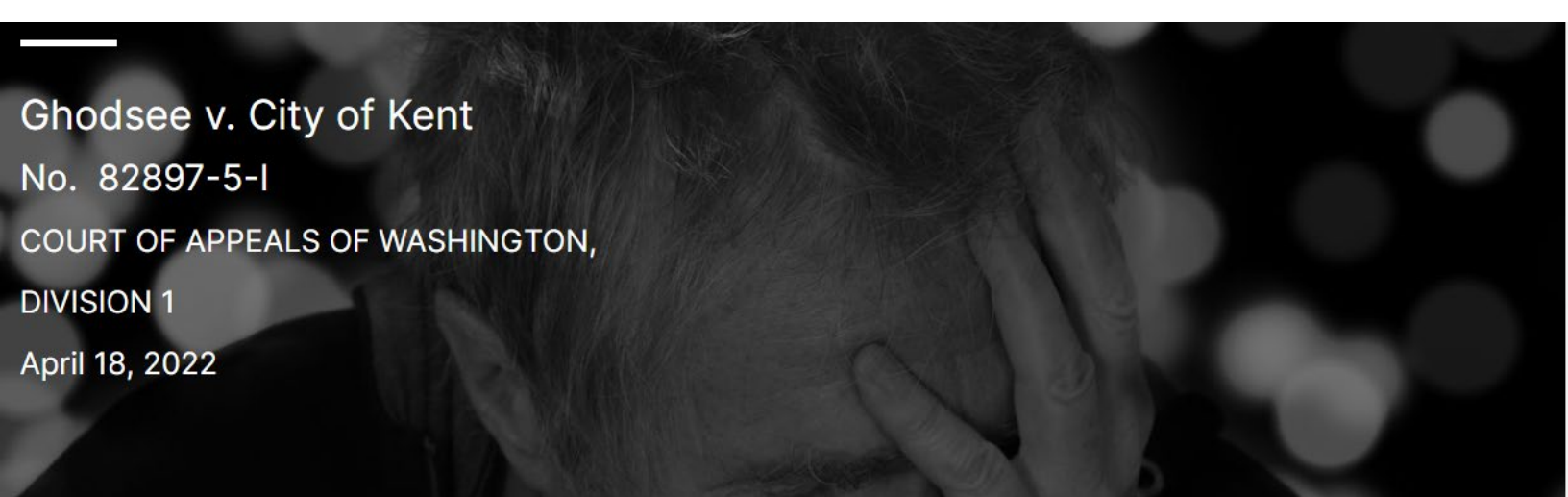
A person has standing under the Uniform Declaratory Judgments Act if **(1) the interest they seek to protect is arguably within the zone of interest to be protected or regulated by the statute or constitutional guarantee in question, and (2) the challenged action has caused injury in fact, economic or otherwise, to the party seeking standing.**

Municipalities have broad police power under the State Constitution, but the exercise of that power may not conflict with general laws. And a state statute preempts an ordinance if the statute occupies the field or if the statute and the ordinance irreconcilably conflict.

In this case, the court explored the nature of state preemption with regard to firearms regulations. **RCW 9.41.290 broadly preempts local ordinances that directly regulate firearms themselves, but not necessarily ordinances that have an incidental effect on the use and enjoyment of firearms or exercises of municipal authority that do not establish rules of general application to the public.**

Notably, the restrictions placed on municipalities by state preemption statutes do not apply when the municipality is acting as an employer or a proprietor.

[EXTERNAL LINK: View the Court Document](#)



Ghodsee v. City of Kent

No. 82897-5-1

COURT OF APPEALS OF WASHINGTON,

DIVISION 1

April 18, 2022

Facts Summary

TOPIC: PUBLIC DUTY DOCTRINE

On June 23, 2017, Shahrbanoo Ghodsee contacted King County Crisis and Commitment Services (KCCCS) and reported that her son, Sina Ghodsee, was not taking his medication, was agitated and delusional, and that she had left the home to stay somewhere else. Days later, Designated Mental Health Professionals (DMHP) attempted to interview Shahrbanoo pursuant to the Involuntary Treatment Act (ITA) at the Ghodsee home, but left after Ghodsee pointed “what appeared to be a table leg at them like a gun.” The DMHP called the police and the Kent Police Department (KPD) responded. The KPD attempted to make contact with Ghodsee but disengaged when they were unsuccessful.

On June 29, 2017, a DMHP filed a Petition for Initial Detention in King County Superior Court, which was granted. On June 30 and July 1, a team of DHMPs attempted to locate Ghodsee at his home but were unable to detain him.

On July 2, KPD was dispatched to Ghodsee’s home after a neighbor reported that Ghodsee was threatening someone and possibly carrying a rifle. However, the caller could not confirm that he saw a gun and KPD never observed a crime, so the officers left without contacting Ghodsee. On July 7, KPD officers planned to take Ghodsee into custody while he was getting groceries. Around midnight on July 9, the manager at a local grocery store called the KPD to inform them that Ghodsee was there, but by the time the officers arrived Ghodsee was gone.

On July 10, KPD received two emergency calls reporting that Ghodsee shot at a neighbor’s occupied home. KPD responded and saw Ghodsee in the window of his home with a rifle raised and pointed in the direction of the officers. Two officers fired at Ghodsee, and he disappeared from sight. Officers used a drone to see inside the home and observed Ghodsee laying on the floor. Ghodsee was taken into custody. Ghodsee suffered a gunshot wound **to**

the head and sustained significant and life-changing injuries.

On May 28, 2020, Ghodsee, through a guardian ad litem (GAL) and his mother, filed a civil complaint alleging negligence against the City of Kent (City) and later amended to include King County doing business as KCCCS.

On May 21, 2021, the City and County moved for summary judgment dismissal on the basis of the public duty doctrine and their claims of statutory immunity.

Note: The public duty doctrine states that in order for a person to recover civil tort damages from a governmental entity, the individual must prove that the governmental entity breached a duty owed to the individual, not simply a breach of duty owed to the public. The public duty doctrine is similar to sovereign immunity, but it recognizes the existence of a tort, authorizes the filing of a claim against a government entity and recognizes applicable liability subject to some limitations. Sovereign immunity denies all liability.

The trial court granted summary judgment for the City and County. Ghodsee appealed.

On appeal, Ghodsee argued that the entry of summary judgment in favor of the defendants was improper.

Like the trial court, the appeals court reviewed all evidence and reasonable inferences in the light most favorable to the nonmoving party (in this case Ghodsee) and was required to affirm the trial court's summary judgment dismissal if it found no genuine issues of material fact "and the moving party was entitled to judgment as a matter of law." A genuine issue of material fact exists if reasonable minds could differ on facts which control the outcome of the proceeding.

The appeals court noted that in a negligence action, the plaintiff must prove four elements: **(1) the defendant owed the plaintiff a duty, (2) there was a breach of that duty, (3) the plaintiff suffered an injury, and (4) the defendant's breach of their duty was the proximate cause of the plaintiff's injury.**

If *any* of these elements cannot be met as a matter of law, summary judgment is appropriate for the defendant. And Duty is a threshold issue in a negligence action. That means that it is the first question asked and if the plaintiff cannot prove that the defendant owed them a duty, as a *matter of law*, the negligence action cannot be sustained.

Ghodsee argued that the City and KCCCS owed him a duty of care under multiple theories. He contended that the County owed him a “take charge duty” under the special relationship exception to the public duty doctrine, and a duty to enforce the non-emergency detention order (NED) issued by the trial court. He also asserted that the City owed him a duty to exercise reasonable care in discharging its responsibilities, and to enforce the NED.

The Court of Appeals noted that there were several exceptions to the public duty doctrine to use as “focusing tools” to determine whether the governmental entity had a duty to the injured plaintiff. The exceptions are (1) legislative intent, (2) failure to enforce, (3) rescue doctrine, and (4) special relationship. The court considered whether the City and KCCCS owed Ghodsee a duty of care based on a special relationship, whether they owed Ghodsee a duty of care under the NED order, and whether law enforcement owed Ghodsee a duty of care. The court also considered whether it was proper for the trial court to find that the City and the County were entitled to Immunity under former RCW 71.05.120.

Special Relationship

Ghodsee argued that the County owed him an individualized duty similar to a take charge duty or provider-patient special relationship exception to the public duty doctrine. Specifically, Ghodsee argued that the NED created a take charge like relationship between Ghodsee and the DHMPs.

The court noted that under the Restatement (Second) of Torts § 315, there is generally no duty to prevent a third party from harming another. However, under § 319, if a special relationship exists between the actor and the third person there may be a duty to “control the third person’s conduct.” This kind of duty arises when an actor “**takes charge of a third person whom they know or should know to be likely to cause bodily harm to others if not controlled,**” creating “**a duty to exercise reasonable care.**” The courts have also recognized a special relationship separate from a take charge duty between a mental health provider and their patients.

For such a relationship to exist, there must be a “**definite, established, and continuing**” relationship between the individual and the mental health counselor. The courts have refused to extend such a duty to emergency room mental health counselors and other mental health counselors who conduct initial assessments and evaluations.

The court noted that the statutory role of DHMPs (now called Designated Crisis Responders)

is to investigate and evaluate information to determine whether to file a petition for initial detention or involuntary outpatient evaluation. They will also interview the individual to see if they will voluntarily receive evaluation and treatment. In Ghodsee's case, the DHMP team never made direct contact.

The court held that the **limited role of DHMPs** combined with the **brief relationship between Ghodsee and the DHMPs** did not rise to the level of a “**definite, established, and continuing relationship**” necessary to create a legal duty within the framework of the public duty doctrine.

NED Order

Ghodsee argued that the language of the NED order created a take charge duty in the City or the County by directing DHMPs and KPD to detain him. The court noted that to analyze whether a take charge duty exists, it must first look to the nature of the relationship. Washington courts have applied this duty in the context of various types of community supervision programs, including the duties of community corrections officers, city probation officers, counselors, county pretrial release counselors, and county probation officers. “The two most important considerations are the court order placing the corrections officer in charge and the statutes giving the officer the power to act.”

Ghodsee wanted the court to extend the application of this type of duty outside the context of corrections or community supervision based on the NED order. To determine whether this was appropriate the court examined both the NED order and the statute authorizing the DHMPs to act.

The court noted that the statute governing DHMPs only grants them the authority to “notify a peace officer to take such person or cause such person to be taken into custody.” **They have neither authority nor mandate to physically detain an individual.**

Further, when considering whether to grant the NED order, the superior court found that Ghodsee presented “a likelihood of serious harm to others,” but not himself. The court ordered that Ghodsee “shall be detained by a DHMP” and further ordered that “any peace officer shall take the respondent into custody.” The court found that the plain language of the order created a legal duty, however, the legal duty was owed to the public at large, not to Ghodsee individually.

The court noted that it has found such a relationship to exist when there is “**individualized responsibility**” and **statutes that describe and circumscribe the officer’s power to act**. In Ghodsee’s case, however, there was no such individualized relationship between Ghodsee and any member of the KPD or the DHMP team and no similar language in the order or the ITA that described and circumscribed how the officers may act in effectuating the detention order.

Because Ghodsee was not able to show an actionable duty based on the NED order as to either the County or the City, the Appeals Court held that his negligence claim failed as a matter of law.

Law Enforcement

Ghodsee argued that the KPD breached its duty of reasonable care to Ghodsee by failing to detain him more swiftly after the NED was issued. Ghodsee claimed that, were he detained sooner, he would not have been shot by the KPD or suffered the serious injuries that resulted from the shooting.

The court noted that *everyone* owes a duty of reasonable care to refrain from causing foreseeable harm in interaction with others, including law enforcement. Police have a duty to exercise reasonable care when discharging their duties, including carrying out court orders. To exercise reasonable care requires that police are allowed to exercise discretion as to how to effectuate court orders. Nothing in the statute or the NED order required the KPD to enforce the detention in any particular way or on any particular time frame. **The officers had discretion to determine the safest way to carry out the courts order**. The court noted that the actions of law enforcement were further constrained by various constitutional considerations.

The court refused to expand liability of a law enforcement agency based on a failure to detain an individual pursuant to the ITA or a NED order. It believed that doing so would seriously undermine the legislative goal of safeguarding the individual rights of ... patients because it could encourage law enforcement to detain patients merely to avoid potential liability to third parties. It noted that *nothing in the NED suspended Ghodsee’s right to privacy in his home or be free from search or seizure in the absence of a warrant or an exception to the state and federal warrant requirements*. When police responded to reports of Ghodsee threatening an unknown individual, the neighbor admitted that he did not see Ghodsee

directly threatening anyone nor was he able to confirm he saw a firearm. *No exception to the warrant requirement applied* and there was *no probable cause that a crime had occurred that would have supported arresting Ghodsee*. And *there were no exigent circumstances to justify entering the home*.

The court held that Ghodsee failed to demonstrate that the City owed him a duty beyond the exercise of reasonable care or that there exists a genuine issue of material fact as to his claim. The court affirmed summary judgment in favor of the City.

[RCW 71.05.120](#) – Exemptions from liability.

Training Takeaway

A negligence action contains four elements: **(1) Duty, (2) Breach, (3) injury, and (4) proximate cause**. If any of these elements cannot be met as a matter of law, *summary judgment for the defendant is proper*.

Duty is the threshold issue in a negligence claim, and in evaluating the duty of a governmental entity the court must consider the public duty doctrine. A threshold issue is one that must be satisfied before other issues are considered.

To succeed in a claim against a governmental entity, pursuant to the public duty doctrine, **the plaintiff must demonstrate that the government owed a duty to the individual plaintiff rather than the public at large**. There are several exceptions to the public duty doctrine which are used as focusing tools to determine whether the public entity had a duty to the injured plaintiff; they include (1) legislative intent, (2) failure to enforce, (3) rescue doctrine, and (4) special relationship.

County designated mental health professionals (DHMPs), evaluated but never met with Ghodsee prior to his shooting by police and detainment pursuant to the ITA. They did not have a **“definite, established, and continued relationship”** with Ghodsee and therefore no special relationship or duty existed.

To determine whether there is a special relationship exception that creates a “take charge” duty, imposing a duty to control a third party’s conduct, the court looks to the nature of the relationship between the tortfeasor and the government actor. In cases such a relationship has been found to exist, two of the most important features of the relationship were *a court order placing an offender on a supervisor officer’s caseload* and *a statute that described*

and circumscribed the officer's power to act. These features indicate that the government owed a duty to the plaintiff individually, rather than to the public at large.

Police have a duty to exercise reasonable care when discharging their duties but that necessarily includes the exercise of discretion by law enforcement as to how to effectuate their duties. The Kent Police Department did not owe Ghodsee a duty to detain him more swiftly after the court issued the non-emergency detention (NED) order. **There was nothing in the statute that required the police to enforce the order in any particular way or on any timeframe, and the NED did not function as a warrant or suspend Ghodsee's individual rights.**

In order for the KPD to intrude upon Ghodsee's home, they needed a warrant or a well-established exception to the warrant requirement. Probable cause alone was not sufficient for a warrantless search, even if it would have supported an arrest which in turn would have supported a search incident to arrest.

The City and County were entitled to statutory immunity for the actions taken with regard to the decision to detain Ghodsee pursuant to the Involuntary Treatment Act (ITA) because **statute plainly provided for immunity and Ghodsee was not able to demonstrate that either the City or the County owed him an individualized duty of care as a matter of law,** which is required to establish gross negligence.

[EXTERNAL LINK: View the Court Document](#)

LINKS

CASES

- [United States v. Hylton](#) (April 5, 2022)
- [Bass v. City of Edmonds](#) (April 21, 2022)
- [Ghodsee v. City of Kent](#) (April 18, 2022)

RCW's

- [RCW 9.41.290](#) State preemption.
- [RCW 9.41.300](#) Weapons prohibited in certain places—Local laws and ordinances—Exceptions—Penalty.
- [RCW 71.05.120](#) Exemptions from Liability