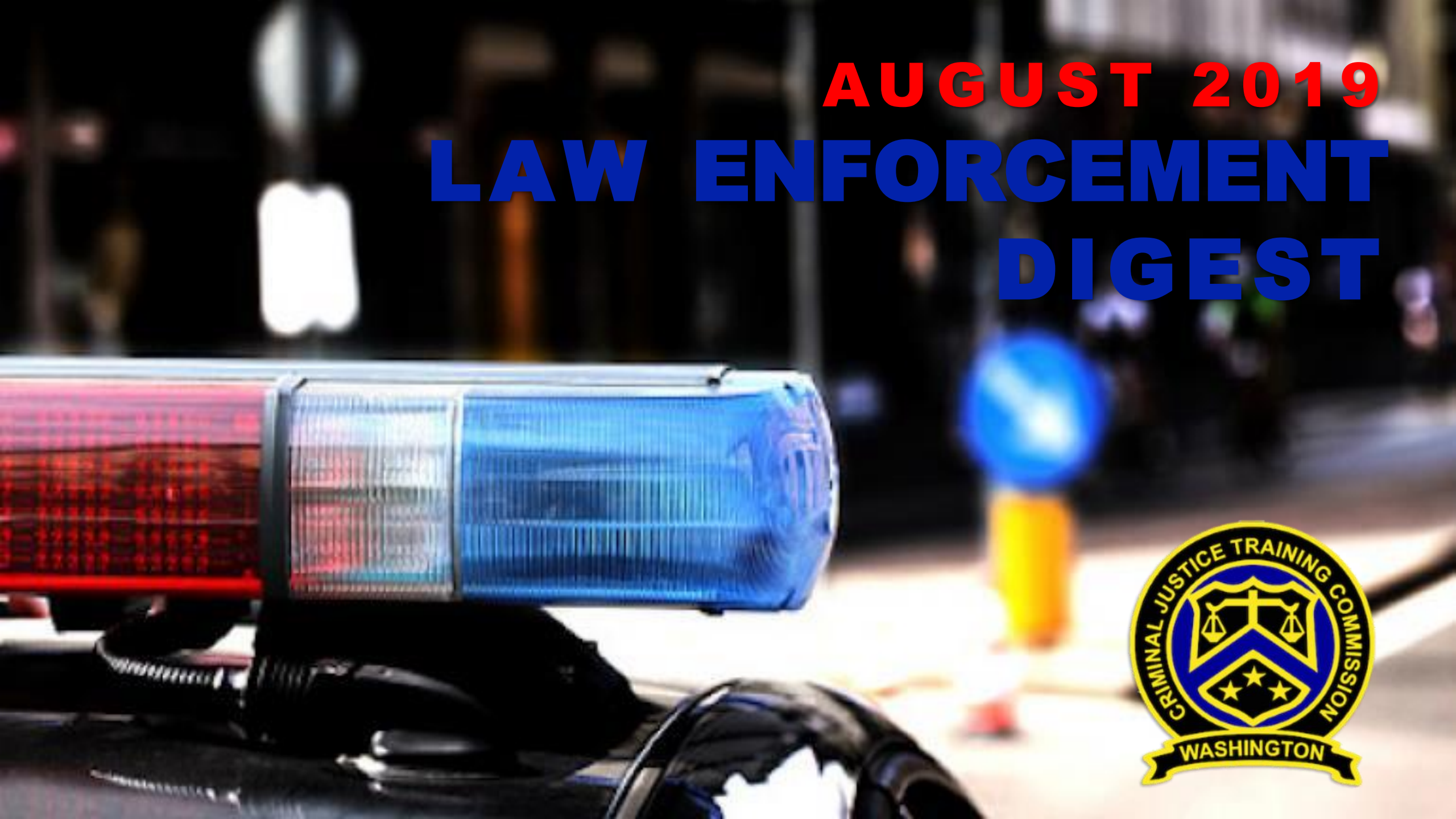

AUGUST 2019
LAW ENFORCEMENT
DIGEST
CRIMINAL JUSTICE TRAINING COMMISSION
WASHINGTON

LAW ENFORCEMENT ONLINE TRAINING DIGEST

Welcome to the August 2019 **Law Enforcement Digest Online Training**! This LED covers select court rulings issued in the month of August from the Washington State Supreme Court, the Washington Courts of Appeal, the United States Supreme Court, and the Ninth Circuit Court of Appeals. The cases are briefly summarized, with emphasis placed on how the rulings may affect Washington law enforcement officers or influence future investigations and charges.

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

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

LAW ENFORCEMENT ONLINE TRAINING DIGEST

August 2019 EDITION

Covering select case opinions issued in August 2019

1. **HEARSAY STATEMENTS; MEDICAL RECORDS; UNLAWFUL IMPRISONMENT**
2. **VEHICULAR HOMICIDE; WARRANTLESS BLOOD DRAW; DUI**
3. **§1983 CLAIM; USE OF FORCE; QUALIFIED IMMUNITY; SEIZURE**
4. **ADDITIONAL RESOURCE LINKS: Legal Update for Law Enforcement (WASPC, John Wasberg) & Prosecutor Caselaw Update (WAPA, Pam Loginsky)**

CRIMINAL JUSTICE TRAINING COMMISSION
WASHINGTON

1 HEARSAY; MEDICAL RECORDS; UNLAWFUL IMPRISONMENT

State v. Scanlan
No. 95971-4 (Aug. 1, 2019)
Washington State Supreme Court

FACTS:

After being unable to contact their elderly father, a recent victim of domestic violence by a much younger live-in girlfriend, the man's adult children went to him home to check on his welfare. A previous 911 hang up call had resulted in a DV no contact order being issued against the girlfriend when officers had arrived at the home and found the elderly man bruised and bloodied.

When the man's adult children let themselves into his house with their key, they found blood and broken debris strewn all over the house, and discovered their father nearly unresponsive and severely bruised from head to toe. Police responded and located the victim's girlfriend hiding under a blanket in her car.

1 HEARSAY; MEDICAL RECORDS; UNLAWFUL IMPRISONMENT

State v. Scanlan
No. 95971-4 (Aug. 1, 2019)
Washington State Supreme Court

FACTS, cont.:

During the course of medical treatment, the victim was asked by his treating medical personnel how he sustained his injuries. He responded with various answers implicating the defendant girlfriend as having assaulted him. No law enforcement officers were present during the conversations between the victim and his medical providers.

Officers later arrived at the hospital and obtained a medical records release from the victim. Officers obtained a second medical records release from the victim for his secondary medical provider.

1 HEARSAY; MEDICAL RECORDS; UNLAWFUL IMPRISONMENT

State v. Scanlan
No. 95971-4 (Aug. 1, 2019)
Washington State Supreme Court

FACTS, cont.:

The victim's statements were introduced at trial through the testimony of the medical providers, leading to the defendant's conviction of 2nd Degree Assault, Felony Violation of a No Contact Order, and Unlawful Imprisonment. The defendant appealed her conviction claiming that introducing the hearsay statements to the medical providers violated her confrontation clause rights and that there was insufficient evidence to support her conviction for Unlawful Imprisonment. The Court of Appeals held that the statements to the medical providers were non-testimonial and therefore not subject to the confrontation clause, and upheld the Unlawful Imprisonment conviction. She now appeals to the Supreme Court.

1 HEARSAY; MEDICAL RECORDS; UNLAWFUL IMPRISONMENT

State v. Scanlan
No. 95971-4 (Aug. 1, 2019)
Washington State Supreme Court

TRAINING TAKEAWAY: Admission of Victim's Statements to Medical Providers

Admission of a crime victim's statements to his medical providers did not violate the defendant's 6th Amendment right of confrontation since the statements were not made with the primary purpose of creating an out-of-court substitute for trial testimony, and were therefore nontestimonial.

1 HEARSAY; MEDICAL RECORDS; UNLAWFUL IMPRISONMENT

State v. Scanlan
No. 95971-4 (Aug. 1, 2019)
Washington State Supreme Court

TRAINING TAKEAWAY: The Primary Purpose Test

The 6th Amendment **Confrontation Clause** provides that in all criminal prosecutions, the accused has the right to confront the witnesses against him.

Whether admission of an out-of-court statement by a declarant who doesn't testify at trial violates the confrontation clause depends on whether the statement was testimonial. If the statement was testimonial, then it is inadmissible unless the witness is unavailable at trial and the defendant had a prior opportunity for cross-examination. Crawford

1 HEARSAY; MEDICAL RECORDS; UNLAWFUL IMPRISONMENT

State v. Scanlan
No. 95971-4 (Aug. 1, 2019)
Washington State Supreme Court

TRAINING TAKEAWAY: The Primary Purpose Test

The **"primary purpose test"** set by the US Supreme Court in *Davis v. Washington* (2006) states that:

1. Statements are nontestimonial when made in the course of police interrogation under circumstances objectively indicating that the **primary purpose of the interrogation is to enable police assistance to meet an ongoing emergency**.
2. Statements are testimonial when the circumstances objectively indicate that there is **no ongoing emergency, and the primary purpose of the interrogation is to establish or prove past events potentially relevant to later criminal prosecutions.**

The court looks to whether, in light of all of the circumstances, viewed objectively, the "primary purpose" of the conversation was the create an out-of-court substitute for trial testimony.

1 HEARSAY; MEDICAL RECORDS; UNLAWFUL IMPRISONMENT

State v. Scanlan
No. 95971-4 (Aug. 1, 2019)
Washington State Supreme Court

TRAINING TAKEAWAY: Statements to Medical Professionals

Statements made to those not principally charged with uncovering and prosecuting criminal behavior (i.e. not law enforcement) are significantly less likely to be testimonial than statements given to law enforcement officers. *Davis v. Washington*

In State V. Sandoval, Division 3 of the Court of Appeals set out a test to determine whether witness statements to a medical doctor are testimonial.
Statements by a witness to a medical professional are NOT testimonial if:
1. they are **made for diagnosis and treatment** purposes,
2. there is **no indication that the witness expected the statements to be used at trial**, and
3. the **doctor is not employed by or working with the State**.

1 HEARSAY; MEDICAL RECORDS; UNLAWFUL IMPRISONMENT

State v. Scanlan
No. 95971-4 (Aug. 1, 2019)
Washington State Supreme Court

TRAINING TAKEAWAY: Statements to Medical Professionals

Here, the victim's statements to medical providers describing the cause of his injuries were elicited for the purpose of administering medical treatment. The medical providers testified that knowing the mechanism of a patient's injury is important because it affects the course of treatment, tests to be run, and patient aftercare planning. None of the medical providers worked for or were asking questions at the request of law enforcement or the prosecution.

The fact that the victim signed waivers allowing the police to obtain his medical records did not alter the primary purpose of these interactions.

1 HEARSAY; MEDICAL RECORDS; UNLAWFUL IMPRISONMENT

State v. Scanlan
No. 95971-4 (Aug. 1, 2019)
Washington State Supreme Court

TRAINING TAKEAWAY: Unlawful Imprisonment Charge

There was sufficient evidence for a jury to draw a reasonable inference that the defendant knowingly restrained the victim, restricting his movements to his house by means of physical force or intimidation, and was therefore guilty of Unlawful Imprisonment.

Unlawful Imprisonment occurs when a person knowingly restrains another person by restricting their movements without consent (accomplished by…physical force, intimidation, or deception) and without legal authority in a manner which interferes substantially with their liberty. RCW 9A.40.040(1), RCW 9A.40.010(6)

1 HEARSAY; MEDICAL RECORDS; UNLAWFUL IMPRISONMENT

State v. Scanlan
No. 95971-4 (Aug. 1, 2019)
Washington State Supreme Court

TRAINING TAKEAWAY: Unlawful Imprisonment Charge

- The victim's statements to medical professionals who were treating his substantial injuries included telling them that he had been held against his will in his home, not really eaten for a couple of days, and was living with a girlfriend who had locked him in a room and beaten him with a candlestick, a broom, and a hammer.
- His children testified that they'd been unable to reach him by cell phone or landline for roughly 24 hours before they arrived to his home and discovered him bloody and nearly unresponsive from the assault, his cell phone was discovered broken in half, and the landline telephones in the home had been damaged.
- Officers testified that there was blood and damage on the walls, broken and weapon-like items were strewn about the home, the defendant was discovered hiding under a blanket in her car, and she responded to one of the children's concerns about what had happened to their father with "It isn't that bad."

1 HEARSAY; MEDICAL RECORDS; UNLAWFUL IMPRISONMENT

State v. Scanlan
No. 95971-4 (Aug. 1, 2019)
Washington State Supreme Court

Practice Pointer: Reliance on Statements and Hearsay

The legal questions about admitting hearsay statements form the basis of many pretrial motions and appellate rulings. As an officer, you aren't expected to know every angle about a legal issue that confuses even the most experienced attorneys and judges. That said, it's important for officers to have a general grasp on what statements are considered testimonial versus non-testimonial, and the broad concepts governing hearsay evidence. This foundation of knowledge will help you ensure your case isn't vulnerable to large elements of your supporting evidence being suppressed by court rulings as unlawfully obtained statements or inadmissible hearsay.

With regard to statements made by medical professionals, remember the providers must not be working for or at the request of the State. You need to be careful that you're not influencing what questions they're asking your victim or witness, or putting pressure on them to create evidence versus merely gather the information they need to properly treat the witness.

2 VEHICULAR HOMICIDE; WARRANTLESS BLOOD DRAW; DUI

State v. Anderson
COA No. 76672-4-I (Aug. 5, 2019)
Court of Appeals, Division I

FACTS:

The defendant was estimated to have been driving at 100 mph in a 35 mph zone when he lost control of his car and crashed. The violence and devastation of the collision, and the catastrophic physical injuries to the five passengers (only one of whom survived), were reported by the highly experienced responding officers to be one of the worst collisions they'd encountered. The defendant was asked on scene who was driving, and admitted it was him. Multiple officers and medics noted that smelled of intoxicants, and the defendant also admitted to "having a few drinks" that night. The defendant's injuries included lacerations to his face, liver, and kidney, a collapsed lung, four rib fractures, a wrist fracture, and bleeding around his adrenal gland.

2 VEHICULAR HOMICIDE; WARRANTLESS BLOOD DRAW; DUI

State v. Anderson
COA No. 76672-4-I (Aug. 5, 2019)
Court of Appeals, Division I

FACTS, CONT.:

Knowing these injuries would require the paramedics to medicate and intubate the defendant, altering the blood sample, and estimating that it would take at least 45 to 90 minutes to obtain a search warrant to draw his blood, the on-scene sergeant ordered a warrantless blood draw prior to paramedics transporting him to the hospital. The draw was completed 10 minutes after the sergeant arrived on-scene. The results of the blood draw were a .19 BAC and 2 ng of THC. The officers subsequently served a search warrant for the defendant's hospital records which

NOTE: The defendant's additional challenges to his conviction and sentence are not discussed in this training because they are technical issues not relevant to day to day law enforcement.

2 VEHICULAR HOMICIDE; WARRANTLESS BLOOD DRAW; DUI

State v. Anderson
COA No. 76672-4-I (Aug. 5, 2019)
Court of Appeals, Division I

TRAINING TAKEAWAY:

The totality of the circumstances justified the exigency of a warrantless blood draw where the driver admitted to drinking prior to the high-impact collision that killed 4 of the vehicle's passengers, and gravely injured a 5th; created a collision scene noted by the experienced officers to be among the worst they'd ever seen; the driver's injuries required his immediate medication, intubation, and transport to the hospital; alcohol naturally dissipates in the blood with time; and there was no delay at the scene before the draw was performed and the driver transported to the hospital.

2 VEHICULAR HOMICIDE; WARRANTLESS BLOOD DRAW; DUI

State v. Anderson
COA No. 76672-4-I (Aug. 5, 2019)
Court of Appeals, Division I

TRAINING TAKEAWAY: Exigent Circumstances and Warrantless Blood Draws

- **As a general rule, warrantless searches and seizures are per se unreasonable under the 4th Amendment and Art 1, Section 7 of the WA State Constitution.**
- A **blood test is a search and seizure**, and in order to perform one without a warrant, there must be a valid exception to the warrant requirement.
- **Exigent circumstances** is a recognized exception to the warrant requirement, and may be justified if the court deems that under the totality of the circumstances, the delay necessary to obtain a warrant is not practical because the delay would permit the destruction of evidence.
- The natural **dissipation** of alcohol and/or drugs from the body may support a finding of exigency.
- The **State has the burden** of showing exigent circumstances by clear and convincing evidence.

2 VEHICULAR HOMICIDE; WARRANTLESS BLOOD DRAW; DUI

State v. Anderson
COA No. 76672-4-I (Aug. 5, 2019)
Court of Appeals, Division I

EXIGENCY IS DETERMINED BY THE TOTALITY OF THE CIRCUMSTANCES

Previous warrantless DUI blood draw cases offer clues to when the courts will find sufficient exigency existed to justify a warrantless blood draw.

- No qualifying exigent circumstances where the suspect struck a pedestrian with her car, performed poorly on SFST, and admitted to smoking marijuana hours earlier. It was 2 hours after the collision before she was transported to the hospital, and 30 minutes after arrival that the warrantless blood draw was conducted. There were nine officers at the Seattle scene. The toxicologist testified that unless someone is a heavy user, THC dissipates from the blood within 3 – 5 hours after consumption. City of Seattle v. Pearson (2016)
- Exigency held to justify a warrantless blood draw where a motorcycle driver crashed on a rural road, causing himself and his passenger injuries; the driver smelled of intoxicants and admitted drinking; his injuries caused him to be unconscious for 5 minutes with head trauma and possible spinal injury that required a helicopter medivac to the closest trauma hospital; and the responding officers lacked a reliable cell phone signal due to the rural nature of the location, making warrant application particularly difficult. State v. Inman (2018)

2 VEHICULAR HOMICIDE; WARRANTLESS BLOOD DRAW; DUI

State v. Anderson
COA No. 76672-4-I (Aug. 5, 2019)
Court of Appeals, Division I

TRAINING TAKEAWAY: Totality of the Circumstances

The court sided with the State that the totality of the circumstances of this case were closer to the *Inman* case than the *Pearson* case.

1. **Severity of the Collision**
   - The collision was high-impact and resulted in fatal and/or catastrophic injuries to multiple passengers and the suspect.
   - Seasoned collision reconstructionists, Drug Recognition Experts, responding officers, and paramedics all testified that it was one of the most devastating collision scenes they'd encountered in their careers.

2. **Injuries and/or Medical Treatment of the Suspect**
   - The defendant had head and organ trauma and was going to require transport to the hospital for treatment.
   - His injuries required that the paramedics medicate and intubate him.

2 VEHICULAR HOMICIDE; WARRANTLESS BLOOD DRAW; DUI

State v. Anderson
COA No. 76672-4-I (Aug. 5, 2019)
Court of Appeals, Division I

3. **Logistics and Timing**
   - Officers testified that it would take 40 – 90 minutes to obtain a warrant for the blood.
   - Alcohol and blood evidence dissipates rapidly in the blood.
   - There were multiple officers on scene (technically suggesting that one of them could draft a warrant while the others were dealing with the scene), but the scene was also particularly chaotic and the carnage catastrophic, which made that problematic.
   - There was no delay in transporting the defendant or conducting the blood draw, supporting that exigency was required in the circumstances.

4. **Signs of Impairment**
   - Multiple officers and paramedics noted the odor of alcohol on the defendant's breath.
   - The defendant admitted to drinking prior to the collision.

The totality of the circumstances was sufficient to support exigent circumstances that justified the warrantless blood draw.

2 VEHICULAR HOMICIDE; WARRANTLESS BLOOD DRAW; DUI

State v. Anderson
COA No. 76672-4-I (Aug. 5, 2019)
Court of Appeals, Division I

PRACTICE POINTERS:

Your default, particularly in cases where there are serious injuries and especially fatalities, should always be to apply for a search warrant for any DUI blood draw.

Relying on exigency is an EXCEPTION to the rule – only use it when the circumstances of your case prevent other feasible options for getting the blood sample via warrant.

Yes, a search warrant takes time up-front to write, apply for, and execute. However, the initial effort reduces your future workload by cutting down on or eliminating future legal challenges to your evidence, and results in stronger cases more likely to result in the offender being held accountable for their actions. Your investigation won't have the same level of uncertainty it has when you've gotten the blood without a warrant and still need the court to rule on its admissibility.
Work with your local prosecutors and judges to make the warrant process as seamless and efficient as possible.

2 VEHICULAR HOMICIDE; WARRANTLESS BLOOD DRAW; DUI

State v. Anderson
COA No. 76672-4-I (Aug. 5, 2019)
Court of Appeals, Division I

If you do rely on exigency to get a warrantless blood draw, be prepared to document and defend every possible detail that led you to that decision.

- Level of injuries;
- Severity of collision scene;
- Suspicion of drug use (which creates unique challenges as to how it dissipates in the blood);
- Number of officers on scene;
- Time needed to draft, apply for, and execute the warrant;
- Logistics of warrant application and/or cell phone reception;
- Need for immediate and/or long-distance transport of the suspect for medical care; Need to medicate the suspect, etc.

The more detail you can provide as to the thought process you applied in deciding to proceed without a warrant, the better!

3 §1983 CLAIM; USE OF FORCE; QUALIFIED IMMUNITY; SEIZURE

Nicholson v. Gutierrez
No. 17-56648 (9th Cir. 2019)
Ninth Circuit Court of Appeals

FACTS:

Four teenagers had gathered in an alley near their school to listen to and sing rap music before their school day. As they stood in a tight circle dancing and rapping, one of the teenagers was holding a plastic Airsoft replica gun with a bright orange tip as a prop. As the group turned off the music and prepared to head to school, officers were driving down the adjoining street in an unmarked car. The officer in the passenger seat saw a person he believed was pointing a blue steel handgun at another person. Believing this was an armed robbery or murder in progress with a real firearm, the officer yelled "Gun, gun, gun!" and immediately jumped from the now-stopped car and ran into the alley. The plain clothes officer claims he identified himself as LAPD and commanded the teen to drop the gun. The teens deny this claim and say that the officer didn't identify himself or make any verbal commands prior to firing his weapon. One of the teens was struck by a bullet in the back. It is unclear whether the teen holding the Airsoft turned and dropped the gun before or after the officer fired 3 shots at the teens.

3 §1983 CLAIM; USE OF FORCE; QUALIFIED IMMUNITY; SEIZURE

Nicholson v. Gutierrez
No. 17-56648 (9th Cir. 2019)
Ninth Circuit Court of Appeals

FACTS, cont.:

After the shooting, the teens were held at gunpoint during which time at least one of the teens told the officers the gun wasn't real and asked what they'd done wrong. The teens were ultimately handcuffed and detained for over five hours while officers investigated. Several of the teens filed a 42 U.S.C. §1983 action claiming violations of their 4th Amendment right to be free from excessive force and unreasonable seizure and violations of their 14th Amendment substantive due process rights. The District Court denied the officer qualified immunity on both claims, and the issue is now appealed to the Ninth Circuit.

3 §1983 CLAIM; USE OF FORCE; QUALIFIED IMMUNITY; SEIZURE

Nicholson v. Gutierrez
No. 17-56648 (9th Cir. 2019)
Ninth Circuit Court of Appeals

TRAINING TAKEAWAY: 4th Amendment Excessive Force and Unreasonable Seizure

Under the circumstances, the teens' detention for five hours after the shooting—well after any probable cause would have dissipated—and the use of handcuffs throughout the duration of the detention violated their clearly established 4th Amendment rights to be free from unlawful arrest and excessive force.

It was apparent to the officers in a short amount of time that the gun was not real, and the teenagers were unarmed, posed no threat, and were not engaged in any criminal activity. There was no reasonable justification for their continued 5 hour, handcuffed detention.

3 §1983 CLAIM; USE OF FORCE; QUALIFIED IMMUNITY; SEIZURE

Nicholson v. Gutierrez
No. 17-56648 (9th Cir. 2019)
Ninth Circuit Court of Appeals

TRAINING TAKEAWAY: 4th Amendment Excessive Force and Unreasonable Seizure

The officer was not entitled to qualified immunity on the 4th Amendment Violation.

*Reminder: A **§1983 action** is a civil case for deprivation of rights. The facts of the case are considered in the light most favorable to the plaintiff (the teens). In this ruling the 9th Circuit is reviewing whether the officers are entitled to **qualified immunity** on these claims. The trial court will then be the one to continue litigating the merits of any remaining claims and the legality of the officers' actions.*

3 §1983 CLAIM; USE OF FORCE; QUALIFIED IMMUNITY; SEIZURE

Nicholson v. Gutierrez
No. 17-56648 (9th Cir. 2019)
Ninth Circuit Court of Appeals

TRAINING TAKEAWAY: Individual Officer Culpability for Overall Conduct

An officer can be held liable where they are just one participant in constitutional rights-violating conduct. The officer's claim that he shouldn't be held liable for the constitutional violation of the teens' extended detention because he played no role in that part of the overall conduct was denied.

The officer was the one who initiated the contact with the teens, and the one who fired his weapon into their group after mistaking the Airsoft for a real gun.

The court noted that the officer was far more than a "mere bystander" to the actions, and that a jury could reasonably find that his actions in the investigation were integral in the unlawfully prolonged detention and sustained handcuffing of the teens.

3 §1983 CLAIM; USE OF FORCE; QUALIFIED IMMUNITY; SEIZURE

Nicholson v. Gutierrez
No. 17-56648 (9th Cir. 2019)
Ninth Circuit Court of Appeals

TRAINING TAKEAWAY: Qualified Immunity

Qualified Immunity provides an individual defense (it cannot be raised by their agency or jurisdiction) to a legal action when an officer's conduct did not violate clearly established statutory or constitutional rights of which a reasonable person would have known. Kisela v. Hughes (2018)

The defense is intended to protect officers from being personally sued in relation to the conduct of their official employment unless they are plainly incompetent or knowingly violate the law.

3 §1983 CLAIM; USE OF FORCE; QUALIFIED IMMUNITY; SEIZURE

Nicholson v. Gutierrez
No. 17-56648 (9th Cir. 2019)
Ninth Circuit Court of Appeals

TRAINING TAKEAWAY: Qualified Immunity

Qualified Immunity is determined by a 2-part inquiry: (1) Did a constitutional violation occur? and (2) Was the right clearly established at the time of the alleged misconduct?

- "Clearly established" doesn't mean there has to be an exactly similar case.
- The existence of the right must be defined at more than a high level of generality that would give the officer **fair notice that their conduct was unlawful**.
- The right must have been established at the time of the officer's conduct.
- The officer's actions are judged with an objective reasonableness standard that examines the conduct from the perspective of a reasonable officer on the scene.

3 §1983 CLAIM; USE OF FORCE; QUALIFIED IMMUNITY; SEIZURE

Nicholson v. Gutierrez
No. 17-56648 (9th Cir. 2019)
Ninth Circuit Court of Appeals

TRAINING TAKEAWAY: 14th Amendment Substantive Due Process Rights

The officer's use of force violated the teens' substantive due process rights under the 14th Amendment, "shocking the conscience" with conduct a reasonable jury could find amounted to deliberate indifference, however, because no similar case existed at the time of the shooting, the District Court erred by denying the officer qualified immunity for this claim.

3 §1983 CLAIM; USE OF FORCE; QUALIFIED IMMUNITY; SEIZURE

Nicholson v. Gutierrez
No. 17-56648 (9th Cir. 2019)
Ninth Circuit Court of Appeals

TRAINING TAKEAWAY: Mitigating Facts

The court acknowledges the seriousness of the situation the officer thought he observed: a person holding what appeared to be a gun standing near other minors who may have been in danger.

However, the facts of the case included many factors that **mitigated the perceived danger of the situation** and the officer's justification for an immediate use of deadly force:

- The teen holding the Airsoft gun wasn't engaged in any threatening or menacing behavior, and kept it securely pointed to the ground.
- It was early morning, and the alleyway was near a school.
- The teens had backpacks and school uniforms, and could be reasonably assumed to be minors on their way to school rather than criminals.
- The officer didn't communicate with his partner, seek cover, or delay before running into the alleyway and then firing his gun toward both the perceived perpetrator, but also the innocent bystanders (including the teen whom the officer shot in the back) - actions contrary to LAPD's training and policy.

3 §1983 CLAIM; USE OF FORCE; QUALIFIED IMMUNITY; SEIZURE

Nicholson v. Gutierrez
No. 17-56648 (9th Cir. 2019)
Ninth Circuit Court of Appeals

TRAINING TAKEAWAY: Mitigating Facts

The court notes that in "minimal information" situations such as this, an officer must take some time to assess what is happening before employing deadly force.

Holding otherwise would result in an "intolerably high risk of a tragic shooting that may otherwise have been avoided by proper deliberation whenever practical." Kisela v. Hughes (2018)

3 §1983 CLAIM; USE OF FORCE; QUALIFIED IMMUNITY; SEIZURE

Nicholson v. Gutierrez
No. 17-56648 (9th Cir. 2019)
Ninth Circuit Court of Appeals

TRAINING TAKEAWAY: Established Right at the Time of the Conduct

Although the court held that a rational trier of fact could find the officer's use of deadly force was unconstitutional, he is entitled to qualified immunity on the 14th Amendment claim because at the time of the shooting, there was no equivalent case on point which would have guided a reasonable officer in the same shoes to have understood he was violating clear legal precedent when he accidentally shot a bystander under these circumstances.

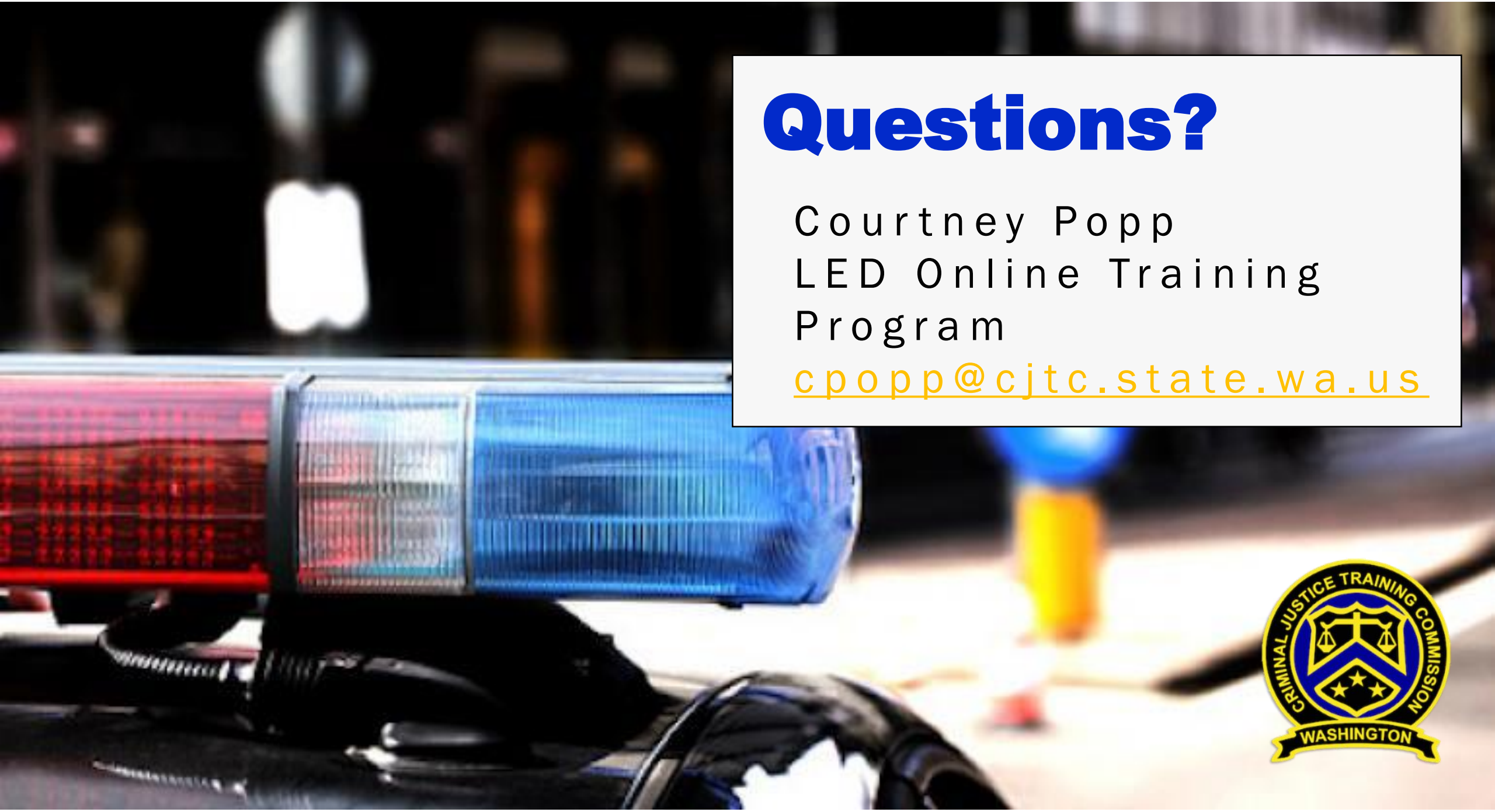
FURTHER READING

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

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

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

http://70.89.120.146/wapa/CaseLaw.html



Questions?

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