DECEMBER 2018

LAW ENFORCEMENT DIGEST

CRIMINAL JUSTICE TRAINING COMMISSION
WASHINGTON

L A W E N F O R C E M E N T
O N L I N E T R A I N I N G D I G E S T

Welcome to the new **Law Enforcement Digest Online Training**! This refreshed edition of the LED continues the transition to an online training resource created with the Washington law enforcement officer in mind. Select court rulings from the previous month are summarized briefly, arranged by topic, with emphasis placed on the practical application of legal changes to law enforcement practices.

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

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

LAW ENFORCEMENT ONLINE TRAINING DIGEST

DECEMBER 2018 Edition

Covering select case opinions issued in November & December 2018

1. WARRANTLESS SEARCH; SRO; POSSESSION OF MARIJUANA
2. TRAFFIC STOPS; WHEELS OFF ROADWAY; DUI
3. VEHICLE IMPOUNDS; COMMUNITY CARETAKING; 4TH AMENDMENT SEIZURE; §1983 CLAIM
4. PUBLIC RECORDS ACT; BRADY DISCLOSURE; OFFICER'S PREEMPLOYMENT POLYGRAPH
5. ADDITIONAL RESOURCE LINKS: Legal Update for Law Enforcement (WASPC, John Wasberg) & Prosecutor Caselaw Update (WAPA, Pam Loginsky)

1 WARRANTLESS SEARCH; SRO; POSSESSION OF MARIJUANA

JUVENILE; POSSESSION OF MARIJUANA
State v. A.S., COA No. 72823.9-I (Dec. 3, 2018)
Court of Appeals, Div. 1

FACTS:

Vice Principal spots a juvenile non-student he suspects (recognized through the picture he looked up on the District's computer system) of being the nonstudent reported to be involved in an alleged threat. After engaging the juvenile in conversation and asking why she was present at the school, she willingly went with the Vice Principal to the Principal's office. The juvenile was not particularly cooperative with the school administrators, but also did not attempt to leave. She had already been advised that the police were on their way. At this point, the Vice Principal smelled the odor of marijuana coming from the juvenile's backpack. He conducted a warrantless search on the juvenile's backpack, finding marijuana and marijuana paraphernalia.

The juvenile now appeals her convictions for Possession of Drug Paraphernalia and Possession of Marijuana claiming that the warrantless search of her backpack was unconstitutional.

1 WARRANTLESS SEARCH; SRO; POSSESSION OF MARIJUANA

JUVENILE; POSSESSION OF MARIJUANA
State v. A.S., COA No. 72823.9-I (Dec. 3, 2018)
Court of Appeals, Div. 1

TRAINING TAKEAWAY – SRO/LE Agency and Local School Interaction and Education

This is a great case to prompt agencies and SROs to engage your local schools with training and discussion. With the increased national emphasis on in-school safety, it's key to ensure school officials understand the parameters for contacting and searching students (or non-students, as in this case) suspected of violating criminal law or school rules.

NOTE:

The WA Supreme Court previously ruled that the school search exception does *not* apply to a fully-commissioned law enforcement officer employed as a School Resource Officer since it was created with the intention of assisting school personnel with implementing in-school discipline and order. See, **State v. Meneese** (2015)

1 WARRANTLESS SEARCH; SRO; POSSESSION OF MARIJUANA

JUVENILE; POSSESSION OF MARIJUANA
State v. A.S., COA No. 72823.9-I (Dec. 3, 2018)
Court of Appeals, Div. 1

TRAINING TAKEAWAY:

A staff member's warrantless search of a nonstudent's backpack was not justified by the "school search exception" where the school staff member had no knowledge of the juvenile's history or school record, made an assumption that she appeared middle school-aged, and testified that he didn't believe drugs were a problem at the school.

The odor of marijuana coming from the juvenile's backpack was insufficient to justify the search of the juvenile's backpack.

1 WARRANTLESS SEARCH; SRO; POSSESSION OF MARIJUANA

JUVENILE; POSSESSION OF MARIJUANA
State v. A.S., COA No. 72823.9-I (Dec. 3, 2018)
Court of Appeals, Div. 1

PRACTICE TIP:

The "school search exception" to the warrant requirement permits teachers and school officials to perform a warrantless search of a student's possessions where:

1. There are reasonable grounds to suspect that the search will turn up evidence that the student has violated or is violating either the law or the rules of the school, and
2. The scope of the search is:
    3. Reasonably related to the objective of the search, and
    4. Not excessively intrusive in light of the age and sex of the student, and the nature of the infraction.

The underlying purpose behind the school search exception is to help school personnel maintain order and implement school discipline.

1 WARRANTLESS SEARCH; SRO; POSSESSION OF MARIJUANA

JUVENILE; POSSESSION OF MARIJUANA
State v. A.S., COA No. 72823.9-I (Dec. 3, 2018)
Court of Appeals, Div. 1

PRACTICE TIP:

The court applies the "McKinnon Factors" in deciding whether the "school search exception" to the warrant requirement was reasonably applied:

- Child's age,
- Child's history,
- Child's school record,
- Seriousness of the problem in the school to which the search was directed, and the
- Probative value and reliability of the information used as a justification for the search.

(See, **State v. McKinnon**, 88 Wn.2d 75 (1977))

Although every factor doesn't have to be present to validate the warrantless search, their total absence will render the search unconstitutional.

1 WARRANTLESS SEARCH; SRO; POSSESSION OF MARIJUANA

JUVENILE; POSSESSION OF MARIJUANA
State v. A.S., COA No. 72823.9-I (Dec. 3, 2018)
Court of Appeals, Div. 1

PRACTICE TIP:

This case does NOT establish a bright line rule that nonstudents may not be searched by school personnel under the "school search exception" to the warrant requirement.

There may be future scenarios where a warrantless search of a nonstudent could be held reasonable.

2 TRAFFIC STOPS; WHEELS OFF ROADWAY; DUI

DUI; TRAFFIC STOP; INFRACTION

State v. Alvarez, COA No. 34711-7-III (Dec. 4, 2018)

Court of Appeals, Division III

FACTS:

Trooper stopped the defendant's vehicle based on a violation of RCW 46.61.670 – Driving with Wheels off Roadway. The driving included the vehicle's wheels briefly traveling over a fog line and onto an area not designated as a roadway – aka the "shoulder."

The driver was then arrested for DUI. She filed a Motion to Suppress claiming that the trooper lacked reasonable suspicion to stop her based on RCW 46.61.670. She further claimed that the statute must be harmonized with RCW 46.61.140 – Driving on Roadways Laned for Travel, which requires drivers to operate their vehicle "as nearly as practicable" within a single lane of travel.

The district and superior courts both granted Defendant's Motion to Suppress, holding that reasonable suspicion did not exist to justify stopping the defendant for violating RCW 46.61.670. The State now appeals the grant of the defendant's Motion to Suppress.

2 TRAFFIC STOPS; WHEELS OFF ROADWAY; DUI

DUI; TRAFFIC STOP; INFRACTION

State v. Alvarez, COA No. 34711-7-III (Dec. 4, 2018)

Court of Appeals, Division III

TRAINING TAKEAWAY:

A violation of RCW 46.61.670 – Driving with Wheels off Roadway may occur even where the driving is merely a "minor, momentary violation," providing a valid basis for a traffic stop and/or issuance of an infraction.

RCW 46.61.670 - Driving with Wheels off Roadway

> It shall be unlawful to operate or drive any vehicle or combination of vehicles over or along any pavement or gravel or crushed rock surface on a public highway with one wheel or all of the wheels off the roadway thereof, except as permitted by RCW 46.61.428 [slow moving vehicles] or for the purpose of stopping off such roadway, or having stopped thereat, for proceeding back onto the pavement, gravel or crushed rock surface thereof.

2 TRAFFIC STOPS; WHEELS OFF ROADWAY; DUI

DUI; TRAFFIC STOP; INFRACTION

State v. Alvarez, COA No. 34711-7-III (Dec. 4, 2018)

Court of Appeals, Division III

TRAINING TAKEAWAY - DEFINITION OF "ROADWAY":

This case is a good refresher on the court's recent definition of "roadway" for purposes of the vehicle code.

In State v. Brooks (March 2018 LED on Brooks) the court defined roadway in a 2 part test:

1. Is the area improved, designed, or ordinarily used for vehicular travel? and
2. Is the area excluded because it constitutes a sidewalk or shoulder?

The area here, paved area to the right of the fog line, fails question 1 because it isn't designed or ordinarily used for vehicular travel.

RCW 46.61.670 therefore prohibits driving with one or more wheels over the fog line unless one of the exceptions (slow moving vehicle, stopping off the roadway, proceeding back onto the roadway from a stop) applies.

2 TRAFFIC STOPS; WHEELS OFF ROADWAY; DUI

DUI; TRAFFIC STOP; INFRACTION

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Court of Appeals, Division III

PRACTICE POINTER – Documentation of Driving and Roadway:

As this case illustrates, the details are (once again) key in ensuring your stop will survive a Motion to Suppress.

USE THE "PICTIONARY TEST":

Could someone read through your report, and with no other information, draw a reasonably accurate general diagram of the roadway and the driving behavior in your case?

If not, then you're failing to (1) make good enough observations at the scene, and/or (2) document what you observed in enough detail in your report.

2 TRAFFIC STOPS; WHEELS OFF ROADWAY; DUI

DUI; TRAFFIC STOP; INFRACTION

State v. Alvarez, COA No. 34711-7-III (Dec. 4, 2018)

Court of Appeals, Division III

PRACTICE POINTER – CAUTION

The court points out here that this ruling doesn't diminish the legality of RCW 46.61.140 – Driving on Roadways Laned for Travel and State v. Prado (2008) which required more than a brief and minor intrusion of a vehicle into an adjoining lane travelling in the same direction.

If there is interest in allowing some room for minor deviations of a vehicle from the roadway under RCW 46.61.670 – Driving with Wheels off Roadway, that change would need to originate in the legislature changing the statutes, not via the court.

NOTE: This is often the "not so subtle hint" that courts drop into case opinions when they think a statutory change might be in order…stay tuned!

3 VEHICLE IMPOUNDS; COMMUNITY CARETAKING; 4TH AMENDMENT SEIZURE; §1983 CLAIM

VEHICLE IMPOUND; NVOL

Sandoval v. City of Santa Rosa, No. 16-16122 (9th Cir., Dec. 21, 2018)

NINTH CIRCUIT COURT OF APPEALS

FACTS:

Plaintiffs were stopped for traffic infractions in two different cases (in Sonoma County and the City of Santa Rosa). Both were ultimately arrested for driving without a license. Neither plaintiff ever had a valid California driver's license.

Citing to California Vehicle Code § 14602.6(a)(1), the defendants' vehicles were both impounded and towed from the scene to the respective law enforcement agency's storage facility.

3 VEHICLE IMPOUNDS; COMMUNITY CARETAKING; 4TH AMENDMENT SEIZURE; §1983 CLAIM

VEHICLE IMPOUND; NVOL

Sandoval v. City of Santa Rosa, No. 16-16122 (9th Cir., Dec. 21, 2018)

NINTH CIRCUIT COURT OF APPEALS

TRAINING TAKEAWAY:

30-day impound of vehicle when the unlicensed driver attempted to have a validly licensed friend take possession of the car was unreasonable under the 4th Amendment.

While there is a valid "community caretaking" exception to the 4th Amendment, there have to be supporting facts that support the need to impound the vehicle to promote the government interest in keeping unlicensed drivers off the road. The circumstances of these cases provided no deterrent justification for the lengthy impound.

3 VEHICLE IMPOUNDS; COMMUNITY CARETAKING; 4TH AMENDMENT SEIZURE; §1983 CLAIM

VEHICLE IMPOUND; NVOL

Sandoval v. City of Santa Rosa, No. 16-16122 (9th Cir., Dec. 21, 2018)

NINTH CIRCUIT COURT OF APPEALS

PRACTICE POINTER:

Most agencies in Washington have already adopted policies, formal or informal, that encourage officers to allow an unlicensed driver to have a validly license person take possession of the car or use another reasonable alternative other than impound for DWLS 3. Officers should use their discretion to determine if given the facts and circumstances they're dealing with, a reasonable alternative to an impound may be appropriate.

Impounds are costly, and while public safety is a key consideration with unlicensed drivers, those who are ineligible to reinstate their license due to financial issues just become more unlikely to meet their obligations and regain a valid license when they are subjected to the high costs of impound. An impound also frequently causes hardship on the unlicensed driver's family. In discretionary situations, these considerations may be considered.

4 PUBLIC RECORDS ACT; BRADY DISCLOSURE; LEO PREEMPLOYMENT POLYGRAPH

PUBLIC RECORDS ACT; BRADY; CIVIL

Sheats v. City of East Wenatchee, COA No. 35555-1-III (Dec. 11, 2018)

Court of Appeals, Division III

FACTS:

Officer worked for the City of East Wenatchee. He applied for a lateral position with the City of Wenatchee. As part of the hiring process, the officer submitted to a polygraph examination. During the examination the officer admitted to several instances of theft and dishonesty in the period between 2000 and 2016.

The results of this polygraph examination came to the attention of the Wenatchee City Attorney's office, which disclosed the wrongdoings the officer admitted to in the polygraph in a letter to defense counsel of a case in which the officer was a witness for the prosecution. She also notified the County and provided the letter. Douglas County requested a copy of the report, but the city declined to provide it based on its interpretation of the Public Records Act employment records exemption.

4 PUBLIC RECORDS ACT; BRADY DISCLOSURE; LEO PREEMPLOYMENT POLYGRAPH

PUBLIC RECORDS ACT; BRADY; CIVIL

Sheats v. City of East Wenatchee, COA No. 35555-1-III (Dec. 11, 2018)

Court of Appeals, Division III

FACTS:

The City did not object to the County's motion to obtain a copy of the polygraph report, and the officer did not file a reply to the motion. The City of Wenatchee provided a copy of the officer's polygraph report to the County, who subsequently redacted it and provided it to defense counsel pursuant to its *Brady* obligations.

Shortly after, the local paper filed a public records request for "a]ll disciplinary records, citizen complaints and ethics complaints pertaining to [the officer.]." The City provided notice to the officer that barring an injunction, the redacted report would be released. The officer filed an action (in an atypical procedural fashion that the court ultimately deemed sufficiently compliant to allow his claim to go forward) to bar release of the redacted report.

The trial court held that *Brady* required disclosure of the redacted report to defense counsel in cases where the officer was a prosecution witness, and that since it was required to be disclosed under Brady, it could also be disseminated to those making a request under the PRA. The officer now appeals the court's ruling.

4 PUBLIC RECORDS ACT; BRADY DISCLOSURE; LEO PREEMPLOYMENT POLYGRAPH

PUBLIC RECORDS ACT; BRADY; CIVIL

Sheats v. City of East Wenatchee, COA No. 35555-1-III (Dec. 11, 2018)

Court of Appeals, Division III

TRAINING TAKEAWAY:

Information relating to a polygraph examination taken by police officers during their pre-employment vetting process qualifies as "other related material submitted with respect to an applicant" and is therefore exempt under RCW 42.56.250(2).

HOWEVER, where the agency possessing the record decided to provide the redacted polygraph report in response to a Public Records Act request, the officer cannot block its dissemination where the report disclosed several instances of theft and dishonesty which would be relevant to a legitimate public interest in whether an officer is honest and law abiding.

4 PUBLIC RECORDS ACT; BRADY DISCLOSURE; LEO PREEMPLOYMENT POLYGRAPH

PUBLIC RECORDS ACT; BRADY; CIVIL

Sheats v. City of East Wenatchee, COA No. 35555-1-III (Dec. 11, 2018)

Court of Appeals, Division III

TRAINING TAKEAWAY:

RCW 42.56.250(2) exempts certain employment information ("applications for public employment, including the names of applicants, resumes, and other related materials submitted with respect to an applicant") from dissemination in response to a public records request under the Public Records Act ("PRA").

Polygraphs taken by law enforcement as part of a pre-employment screening qualify as "other related materials submitted with respect to an applicant."

4 PUBLIC RECORDS ACT; BRADY DISCLOSURE; LEO PREEMPLOYMENT POLYGRAPH

PUBLIC RECORDS ACT; BRADY; CIVIL

Sheats v. City of East Wenatchee, COA No. 35555-1-III (Dec. 11, 2018)

Court of Appeals, Division III

TRAINING TAKEAWAY:

Brady v. Maryland requires that the government disclose to defense counsel any potential exculpatory or impeachment evidence favorable to a criminal defendant.

RCW 43.101.095(2)(a) requires rigorous screening of peace officers to determine their suitability for employment, establishing a clear public policy that peace officers be law abiding persons.

Although a typical polygraph report that does not contain exculpatory evidence impacting a would-be officer's lawfulness would NOT be subject to disclosure under the Public Records Act, it is the criminal theft and dishonesty evidence that transformed this officer's redacted polygraph report into a required disclosure by the city.

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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