
DECEMBER 2019
LAW ENFORCEMENT
DIGEST
CRIMINAL JUSTICE TRAINING COMMISSION
WASHINGTON

LAW ENFORCEMENT ONLINE TRAINING DIGEST

Welcome to the December 2019 **Law Enforcement Digest Online Training**! This LED covers select court rulings issued in the month of December 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

DECEMBER 2019 EDITION

Covering select case opinions issued in December 2019

1. **STATE-CREATED DANGER DOCTRINE; §1983; DOMESTIC VIOLENCE**
2. **TRAFFIC INFRACTION; DUI; VEHICLE STOP**
3. **INTIMIDATING A PUBLIC SERVANT; TELEPHONE HARASSMENT**
4. **ADDITIONAL RESOURCE LINKS: Legal Update for Law Enforcement (WASPC, John Wasberg) & Prosecutor Caselaw Update (WAPA, Pam Loginsky)**

CRIMINAL JUSTICE TRAINING COMMISSION
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1 STATE-CREATED DANGER DOCTRINE; §1983; DOMESTIC VIOLENCE

Martinez v. City of Clovis
No. 17-17492 (Dec. 4, 2019)
Ninth Circuit Court of Appeals

FACTS:

Victim was in a dating relationship with a California city police officer. The case stems from the investigatory response to two separate domestic violence incidents.

First Incident: After the victim's police officer boyfriend physically attacked the victim at her cousin's home, she pretended to leave the house and then hid outside until he left. She called 911 and returned via taxi to their shared house after the responding officers (who worked for the same agency as the boyfriend) were on scene. The boyfriend approached the taxi and told her not to say anything to the officers.

Of the two officers who responded to the call, the victim didn't want to speak to one because he was a friend of her boyfriend/suspect. The other officer spoke to the victim outside of the boyfriend/suspect's immediate presence, although the victim maintains the boyfriend was still within eye and earshot. (*Because this is an appeal of a grant of summary judgment, disputed facts are interpreted in favor of the victim's version*.)

1 STATE-CREATED DANGER DOCTRINE; §1983; DOMESTIC VIOLENCE

Martinez v. City of Clovis
No. 17-17492 (Dec. 4, 2019)
Ninth Circuit Court of Appeals

FACTS, cont.:

The officer testified that the victim told her about the boyfriend's prior physical abuse that occurred in another city, but hadn't mentioned any abuse occurring that night. The victim's testimony was inconsistent, but she ultimately clarified that she told the officer that her boyfriend had pushed her down the stairs that evening. She says the officer then asked her to "hold on a second" and moved away, during which the boyfriend glared at her in an intimidating manner. She said she walked toward him because she didn't want him to think she was talking to the officer. The victim testified that the officer returned with a tape recorder and asked her to repeat her previous statements about what happened in the other city. This was done in front of the boyfriend, who she stated cleared his throat in an angry manner, and the victim pretended to not know what the officer was talking about to avoid further angering the boyfriend.

1 STATE-CREATED DANGER DOCTRINE; §1983; DOMESTIC VIOLENCE

Martinez v. City of Clovis
No. 17-17492 (Dec. 4, 2019)
Ninth Circuit Court of Appeals

FACTS, cont.:

When questioned, the officer noted that she had received domestic violence training and stated that she believed the victim faced potential risk by staying with the boyfriend that night. The officer also noted that she was aware that DV victims may tend to recant out of fear of reprisal from their abuser. Despite this, the officer did not arrest the boyfriend, and did not provide the victim with any of the required information about DV resources and protections available to her. The officer believed that the victim hadn't indicated any violence had occurred that evening, and that the call was a welfare check rather than a DV call.

The boyfriend testified that after the victim went inside the house, the officer – whom he'd worked with for 9 years, but they didn't really know each other – asked him what he was doing "dating a girl like her," and said that she didn't think the victim was necessarily "a good fit for him."

The boyfriend physically abused the victim that night, referring to her as a "leaky faucet" and asking what she'd told the officers and if she was trying to get him into trouble.

1 STATE-CREATED DANGER DOCTRINE; §1983; DOMESTIC VIOLENCE

Martinez v. City of Clovis
No. 17-17492 (Dec. 4, 2019)
Ninth Circuit Court of Appeals

FACTS, cont.:

Incident 2: A month later, June 2013, neighbors called 911 to report a suspected DV assault at the victim and boyfriend's new home in the city of Sanger. Four Sanger PD officers were dispatched to the call. The victim had visible injuries consistent with physical abuse: red cheek, scrapes on her knees, a broken and bleeding fingernail, a torn shirt, and bruising on her arms. When interviewing the parties, the officers separated them by only about 7 feet. The victim, terrified that her boyfriend could hear her, whispered to one of the officers that her boyfriend had inflicted the injuries, and that he had tried to smother her with a pillow and choked her. The officer determined the had PC to arrest the boyfriend, and that the arrest was mandatory under California's DV laws.

The officer informed the other officers on scene that the boyfriend was a police officer on administrative leave from his department due to previous DV allegations (which she'd learned from the victim), and indicated her intent to make the arrest. The acting supervisor on scene instructed her to not make the arrest, but instead to refer the case to the DA's office for charging. The officer reluctantly complied with her supervisor. She believed the woman was at risk of further violence and attempted unsuccessfully to convince the victim to let the officer help her.

1 STATE-CREATED DANGER DOCTRINE; §1983; DOMESTIC VIOLENCE

Martinez v. City of Clovis
No. 17-17492 (Dec. 4, 2019)
Ninth Circuit Court of Appeals

FACTS, cont.:

The supervisor who instructed the investigating officer not to make the arrest had worked with and knew the boyfriend's police officer father. As the officers left the scene, he commented that the family was "good people" within hearing of the boyfriend and the victim. (There was no court testimony or deposition of the supervisor, as by the time the case was being litigated, he was in treatment for dementia and unable to participate.) That night the victim was again physically and sexually assaulted by the boyfriend. He was arrested the following day and no contact orders were entered. The victim continued to live with the boyfriend for 3 more months, during which she was subjected to additional violence. He was eventually convicted of several order violations and an assault charge.

The victim sued the police departments and the individual officers for due process violations under the state-created danger doctrine. The trial court granted the summary judgment motion dismissing the claims against the individual officers and the police agencies. The victim now appeals that ruling.

1 STATE-CREATED DANGER DOCTRINE; §1983; DOMESTIC VIOLENCE

Martinez v. City of Clovis
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Ninth Circuit Court of Appeals

TRAINING TAKEAWAY:

The State-Created Danger doctrine is violated where the investigating officers reveal a victim's confidential DV assault complaint to her police officer boyfriend/abuser while also making derogatory comments about her, and where an investigating officer praises the officer/abuser as "good people" immediately after indicating the abuser won't be arrested despite the existence of probable cause.

- Despite these egregious actions, the officers in this case were entitled to qualified immunity because the court determined that at the time of the original actions the constitutional right wasn't clearly established.
- However, officers will now be held to this newly defined rule in the 9th Circuit, and similar actions will NOT entitle officers to qualified immunity.

1 STATE-CREATED DANGER DOCTRINE; §1983; DOMESTIC VIOLENCE

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TRAINING TAKEAWAY – STATE-CREATED DANGER DOCTRINE

The 14TH Amendment Due Process clause provides that "no State shall…deprive any person of life, liberty, or property, without due process of law."

There is no guarantee of certain minimal levels of safety and security owed by the state to third parties, except where either a (1) special relationship exists between the plaintiff and the state, or (2) where the state affirmatively places in danger by acting with 'deliberate indifference' to a 'known or obvious danger' in a state-created danger.

- **State-Created Danger Example:** By informing a victim's assailant of the accusations her family had made against him before they had an opportunity to protect themselves from his violent response to the news, the officer was liable for creating an opportunity for the assailant to assault the victim that otherwise would not have existed. Kennedy v. City of Ridgefield

1 STATE-CREATED DANGER DOCTRINE; §1983; DOMESTIC VIOLENCE

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Ninth Circuit Court of Appeals

TRAINING TAKEAWAY – STATE-CREATED DANGER DOCTRINE

The allegation in this case is that the investigating officers deprived the victim of liberty by **affirmatively** placing her at **greater** risk of abuse and danger through their actions and inactions.

The court found that:

- The officers' affirmative actions (interviewing the victim within eye and ear shot of the suspect, commenting on the victim in a derogatory way to the suspect after failing to arrest him despite having probable cause to do so and complimenting his character in another similar instance) exposed the victim to an actual, particularized danger (physical retaliation for reporting his crimes to the police) that she wouldn't otherwise have faced (their actions implied the suspect could abuse the victim further without fear of punishment).
- Such a danger was foreseeable to the trained and experienced officers.
- The actions of the officers showed deliberate indifference to the known danger.

1 STATE-CREATED DANGER DOCTRINE; §1983; DOMESTIC VIOLENCE

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PRACTICE POINTERS:

Much of this case demonstrates policework that would not comply with agency policies and professionalism standards, current training, or law in Washington State. Not only did the officers and agencies place the victim in further harm, their actions (and inaction) contributed to an erosion of public trust in the service they provide to their communities.

- Relatively simple steps such as ensuring the victim could speak to officers in private, without the suspect being able to hear or see them, and not indicating in front of him that the victim had disclosed violent behavior, could have significantly altered the outcome of these events.

1 STATE-CREATED DANGER DOCTRINE; §1983; DOMESTIC VIOLENCE

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RESOURCES – Preventing and Investigating LE-involved DV:

Law enforcement families face a multitude of stressors and complicating factors that make prioritizing officer and family wellness an important step in preventing any potential violence in the family. The following resources may be of use in guiding efforts to prevent and/or investigate situations involving officer-involved domestic violence:

LE Training Toolkit on Preventing Officer-Involved Domestic Violence:

https://nationaltoolkit.csw.fsu.edu/

WASPC Model Policy on Officer-Involved DV:

https://www.waspc.org/assets/ProfessionalServices/modelpolicies/waspc_model_policy-oidv-final.pdf

The Highly Trained Batterer – Strategies to Address OIDV:

https://aequitasresource.org/wp-content/uploads/2018/09/Strategies-The-Highly-Trained-Batterer-14.pdf

2 TRAFFIC INFRACTION; DUI; VEHICLE STOP

State v. Brown
No. 96884-5 (Dec. 26, 2019)
Washington State Supreme Court

FACTS:

The defendant was observed by a trooper turning right onto a 4-lane street. While turning, the left side tires of the defendant's truck briefly crossed the white dashed divider line before moving back into the correct lane. Eventually the driver activated his left turn signal and moved his truck while the signal blinked multiple times before shutting off. The driver again signaled, pulled into the designated turn lane, and his blinker flashed twice before stopping. He approached and stopped at a red light, but did not reactivate his left turn signal at the light or while executing the left turn. The trooper initiated a stop of the truck, and after an investigation, the driver was arrested for DUI with a .260 BAC.

2 TRAFFIC INFRACTION; DUI; VEHICLE STOP

State v. Brown
No. 96884-5 (Dec. 26, 2019)
Washington State Supreme Court

FACTS, cont.:

The District Court upheld the defendant's challenge to the stop, ruling that a driver is not required to reactivate a turn signal when entering a turn-only lane. The DUI was then dismissed. The State appealed to the Superior Court, which reversed the conclusion that RCW 46.61.305 doesn't require a driver to continuously signal his intent to turn left. The Court of Appeals then reversed the Superior Court's finding, holding that RCW 46.61.305 requires a signal only when public safety is affected, and since the defendant was in a turn-only lane that didn't jeopardize public safety, no signal was required. The State requested this review by the Supreme Court.

2 TRAFFIC INFRACTION; DUI; VEHICLE STOP

State v. Brown
No. 96884-5 (Dec. 26, 2019)
Washington State Supreme Court

TRAINING TAKEAWAY:

RCW 46.61.305(2) requires a driver to use their turn signal, continuously during not less than the last 100 feet travelled, every time they turn or change lanes on a roadway.

- ✓ **The stop of a driver who used his turn signal to enter into the turn-only lane, but then didn't reactivate his signal before actually turning following a red light, was valid.**

2 TRAFFIC INFRACTION; DUI; VEHICLE STOP

State v. Brown
No. 96884-5 (Dec. 26, 2019)
Washington State Supreme Court

TRAINING TAKEAWAY:

"When required" in the statute refers to the manner in which the required signal is made – continuously during not less than the last 100 feet travelled – NOT that there are times when a turn or lane move can be done without a signal.

NOTE: A 2003 case with the same name previously clarified that RCW 46.61.305 applies to a vehicle that is turning ON a roadway, but NOT when turning ONTO a roadway (ie turning from a private parking lot onto a road). State v. Brown

2 TRAFFIC INFRACTION; DUI; VEHICLE STOP

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Washington State Supreme Court

PRACTICE POINTER:

The most straightforward way to justify a traffic stop is to document a valid infraction.

- ✓ Understand the preferences of your local prosecutor, but typically the best practice is to include a reference in your report to the primary RCW (or municipal code) violated, along with a detailed description of all relevant observed driving and any equipment violations.

This level of detail ensures your prosecutor has the information they need to properly evaluate the strength and defensibility of your stop, and often heads off the need for motion hearings to defend the validity of the stop.

3 INTIMIDATING A PUBLIC SERVANT; TELEPHONE HARASSMENT

State v. Dawley
No. 77982-6-I (Dec. 30, 2019)
COURT OF APPEALS, DIVISION I

FACTS:

The defendant is a discharged military veteran who had suffered a traumatic brain injury. At night, he would take long walks with a friend, during which they made frequent calls to the non-emergency line to report traffic issues, parking violations, and other complaints that they came across. Over a period of several years, officers responded to many such calls. Dissatisfied with the officers' responsiveness, the defendant complained to the chief of police and the city attorney.

One evening the defendant called the non-emergency line to report parking violations he'd spotted on his walk. An officer was dispatched to talk to him. The officer located the man sitting with his dog on a stump. He remained in his car, but shined his spotlight onto the man. The officer suggested the man start carrying a pen and notebook with him on his walks and then he could report the things he saw all at once. Around this time, a second officer arrived. The first officer noted this seemed to agitate the man further.

3 INTIMIDATING A PUBLIC SERVANT; TELEPHONE HARASSMENT

State v. Dawley
No. 77982-6-I (Dec. 30, 2019)
COURT OF APPEALS, DIVISION I

FACTS, cont.:

The man told the officer not to get out of his patrol car or else his dog would attack. In response, the officer told the man that if he let his dog attack him, the officer would be forced to shoot his dog. The man replied that he was aware of self-defense laws, and that if the officer shot his dog, the man would stab the officer. The second officer added that if the man stabbed his partner, the officer would have to shoot you. The opinion doesn't provide any additional information about how this contact ended.

The following day the man called the chief of police and left a message stating:

> "This is Jeremy Dawley again. I'm not getting a phone call back from you. So do I need to look up your address and literally show up at your house 'cause I'm that not afraid of you, and I'm that pissed off at your police officer. Urn, I need something done about last night. . . . Is that how you guys do business? You and I, thought we had good terms but apparently, that just went to shit last night, so true colors came out. So I want to know what the hell you want me to do. Like is this just like a personal thing, like I just have to handle it myself? Or are you going to take my complaint serious at some point? Like where do you want this to stop? . . . I was the guy who was almost shot by the police department because I want people to start acting right. So if you could give me a call back that would be awesome. Thank you."

3 INTIMIDATING A PUBLIC SERVANT; TELEPHONE HARASSMENT

State v. Dawley
No. 77982-6-I (Dec. 30, 2019)
COURT OF APPEALS, DIVISION I

FACTS, cont.:

The chief returned the man's voicemail and summarized the call by saying it was clear the man was upset with the officers and the contact he'd had, and that the man pretty quickly went to the fact that he was going to look up my information, information on my family and the city attorney, and that he would seek out certain groups to provide that information to. The chief reported that the man, "said he was going to use. . . Green Beret tactics, and then he further explained that he would get the local populace to take the action so he wouldn't have to. [H]e wanted certain actions to take place, and he wanted them—quick responses. And these are these calls of the bushes and parked cars and those things and that he wasn't getting that, he wasn't happy, and that I wasn't doing anything about it."

The chief spoke to the city attorney to relay the comments the man had made about her and her family. She called the man back while the chief was present, and with the man's permission, recorded the call. During the call the man continued his request that something ought to be done about the situation. He clarified, "So, I mean, it's completely up to you. But if you guys aren't willing to draw the line, like I'm gonna protect myself. I'm not saying I'm gonna come after you guys 'cause that's—I'm not a murderer, I'm a law-abiding citizen. . Thank you much for making me feel unsafe in my community that I've never done anything wrong in. I hope you feel safe though. You feel safe, ma'am? Do you feel safe at your house when you go to sleep?"

3 INTIMIDATING A PUBLIC SERVANT; TELEPHONE HARASSMENT

State v. Dawley
No. 77982-6-I (Dec. 30, 2019)
COURT OF APPEALS, DIVISION I

FACTS, cont.:

The city attorney asked the man about his call with the chief, and he told her that he just "felt others in the community would like to know your whereabouts, your picture, the picture of your children. I mean, that's legal. I can do that." Dawley went on to say, "It's a community improvement project, you know. It's a Green Beret tactic where you teach the locals, so it's nothing illegal. I'm not obligating or even insisting that they do anything illegal. All I'm doing is I told them I would provide the information."

When the city attorney clarified his statements, the man stated "I can educate whoever I like on any matter of personal defense, offensive offense. That's not illegal, so you cannot be upset about that. And as far as providing your picture and stuff, they already know who you are. So I'm not doing anything illegal. I'm not saying I'm gonna ask 'em to go and do anything illegal to you, no. I didn't do anything like that." He indicated he wanted the city attorney to do her job, and that he didn't want to be assaulted, killed, or harassed by the police department. He then proposed that "let's just say hypothetically. . . I was going to say, "Hey, you know what, I'll do a direct mailing to the pedophiles and the rapists and the violent offenders, and I'll have 'em sent to your house because . you make me feel unsafe. I can't defend myself. . . You're in your home, you have your gun, you're comfortable, you're not on the street, you know what to do if somebody approaches your home. No, that's not right, that's not what you did to me. And what you did to me as a city is you made me feel completely unsafe, not once but twice now. Your officers have put me into killing range with a firearm. A firearm, ma'am! What happens if I came to your house and I put you into killing range with a firearm, right? You'd be upset."

3 INTIMIDATING A PUBLIC SERVANT; TELEPHONE HARASSMENT

State v. Dawley
No. 77982-6-I (Dec. 30, 2019)
COURT OF APPEALS, DIVISION I

FACTS, cont.:

When, the following day, the man filed public records requests with the police department for records on "violent offenses that resulted in physical harm and offenders to include sexual assaults," the chief arrested the man. He was ultimately convicted at jury trial of 2 counts of Intimidating a Public Servant and one count of Telephone Harassment.

The defendant now appeals his convictions for Intimidating a Public Servant, claiming that the statute is unconstitutionally overbroad because it restricts a substantial amount of protected First amendment speech because it is not limited just to true threats.

3 INTIMIDATING A PUBLIC SERVANT; TELEPHONE HARASSMENT

State v. Dawley
No. 77982-6-I (Dec. 30, 2019)
COURT OF APPEALS, DIVISION I

TRAINING TAKEAWAY:

The Intimidating a Public Servant statute, RCW 9A.76.180, which states that a person is guilty of intimidating a public servant if, by use of a threat, he or she attempts to influence a public servant's vote, opinion, decision, or other official action as a public servant, **is constitutionally valid only when it is limited to true threats.**

- ✓ **A true threat is a statement made "in a context or under such circumstances wherein a reasonable person would foresee that the statement would be interpreted as a serious expression of the intention to inflict bodily harm upon or to take the life of another."**

- ✓ The Intimidating a Public Servant statute prohibits true threats, but also implicates speech protected by the First Amendment because it establishes a violation of the law via threats to a person's business, financial condition, or personal relationships.

3 INTIMIDATING A PUBLIC SERVANT; TELEPHONE HARASSMENT

State v. Dawley
No. 77982-6-I (Dec. 30, 2019)
COURT OF APPEALS, DIVISION I

TRAINING TAKEAWAY – Threat Definition:

Threat is defined in the Intimidating a Public Servant Statute as " to communicate, directly or indirectly, the intent immediately to use force against any person who is present at the time; or as defined under RCW 9A.04.110(28) (which includes behavior that is pure speech, and therefore forms the basis of the court's ruling that the is unconstitutionally overbroad in this context.)

- ✓ **The State ultimately conceded, and the court agreed, that the defendant's calls with the chief and the prosecutor did not rise to the level of a true threat.**

3 INTIMIDATING A PUBLIC SERVANT; TELEPHONE HARASSMENT

State v. Dawley
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COURT OF APPEALS, DIVISION I

TRAINING TAKEAWAY – Threat Definition:

The defendant made no serious expression of intention to inflict bodily harm upon or take the live of another individual ("true threat"), and therefore his conviction for Intimidating a Public Servant is reversed.

- Although his language during the voicemails and calls with the chief and city attorney were definitely cause for alarm, and the situation warranted intervention, there is not enough evidence that his words alone constituted a true threat, and the jury was not instructed that the violation would have to be a true threat in order to pass constitutional review.

3 INTIMIDATING A PUBLIC SERVANT; TELEPHONE HARASSMENT

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CIT ANNUAL TRAINING – Traumatic Brain Injury:

It is important to note that the defendant is a disabled veteran discharged from the military with a traumatic brain injury. This was likely a factor in the court's weighing the probable intent behind the interactions in this case, and an important consideration for any police agency or officer encountering a similarly challenging situation.

- ✓ **In depth training on interaction with persons affected by traumatic brain injuries will be available via the 2020 CIT Annual Online Training launching 2/7/2020 on the CJTC online training portal.**

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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