

FEBRUARY 2019
LAW ENFORCEMENT
DIGEST

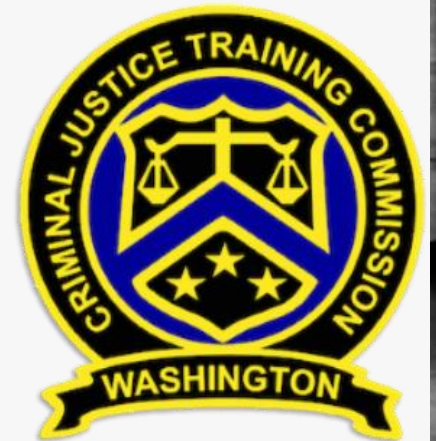


LAW ENFORCEMENT ONLINE TRAINING DIGEST

Welcome to the February 2019 **Law Enforcement Digest Online Training!** This LED continues the transition to an online training resource created with the Washington law enforcement officer in mind. Select court rulings from the month of the edition (ex – this February training covers the cases issued in February 2019) 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

FEBRUARY 2019 EDITION

Covering select case opinions issued in February 2019

1. TRAFFIC STOP; PASSENGER ID; SEARCH & SEIZURE; CONSENT
2. BREATH TESTING; DUI; WARRANTLESS SEARCH
3. EXCLUSIONARY RULE; SEARCH & SEIZURE; CONSENT
4. SECURE YOUR LOAD PSA & RESOURCES
5. ADDITIONAL RESOURCE LINKS: Legal Update for Law Enforcement (WASPC, John Wasberg) & Prosecutor Caselaw Update (WAPA, Pam Loginsky)



1

TRAFFIC STOP; PASSENGER ID; SEARCH & SEIZURE; CONSENT

TRAFFIC INFRACTION; POSSESSION WITH INTENT TO DELIVER

State v. Lee, 7 Wn. App. 2d 692 (Feb. 25, 2019)
COURT OF APPEALS, DIV. I

FACTS:

Defendant was the passenger in a car that was stopped for 2 infractions. The driver was placed under arrest for DWLS/R 1st Degree. He consented to a search of the car. The officer had the female passenger step out of the vehicle while he searched the car. She left her purse inside the car when she exited. He ran her ID for the purpose of possibly letting her drive the car away, but then saw that her license was suspended, and at that time also noted that she had a prior drug conviction.

The officer asked the passenger for consent to search her purse, and let her know he was asking “due to her prior conviction.” He also read the passenger *Ferrier* warnings. When he asked her if there was anything in her purse that he should be concerned about, she told him there was heroin inside the purse. Less than 20 minutes elapsed between the time the stop was initiated and the search. The passenger was arrested for Possession of a Controlled Substance with Intent to Manufacture or Deliver.



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TRAFFIC STOP; PASSENGER ID; SEARCH & SEIZURE; CONSENT

**TRAFFIC INFRACTION; POSSESSION
WITH INTENT TO DELIVER**
State v. Lee, 7 Wn. App. 2d 692 (Feb. 25, 2019)
COURT OF APPEALS, DIV. I

TRAINING TAKEAWAY:

Officers do not exceed the reasonable scope and duration of a traffic stop by asking a lawfully seized passenger for consent to search the purse she left inside the car the driver had consented to be searched where the officers asked a single question about the passenger's prior drug conviction.



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TRAFFIC STOP; PASSENGER ID; SEARCH & SEIZURE; CONSENT

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State v. Lee, 7 Wn. App. 2d 692 (Feb. 25, 2019)
COURT OF APPEALS, DIV. I

TRAINING TAKEAWAY – VOLUNTARY CONSENT & UNLAWFUL SEIZURE:

The US and Washington constitutions provide an exception to the warrant requirement for voluntary consent to search.

However, if the seizure of the individual consenting to the search was unlawful, the person's **voluntary consent may be invalidated**.

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COURT OF APPEALS, DIV. I

TRAINING TAKEAWAY – SEIZURE OF PASSENGER DURING A TRAFFIC STOP:

When officers conduct a valid traffic stop, all occupants of the vehicle are seized for the reasonable duration required for law enforcement to investigate any possible criminal activity, and to conduct any lawful search.

See, State v. Marcum, 149 Wn.App. 894 (2009)

The stop (and seizure) end when the officer has no further need to control the scene, and informs the driver and any passengers that they are free to leave.



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COURT OF APPEALS, DIV. I

TRAINING TAKEAWAY – SEIZURE OF PASSENGER DURING A TRAFFIC STOP:

Officers may request a vehicle's occupants "to step out of and away from their vehicles, and to perform other limited movements."

- During a traffic stop, officers may order passengers to stay in or exit a vehicle to:
 - (1) Control the scene of an investigation, and
 - (2) Ensure officer safety (as long as they can **articulate** an objective rationale for doing so.)

See, [State v. Mecham](#), 186 Wn.2d at 144 (2016); [State v. Flores](#), 186 Wn.2d 506 (2016)



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TRAINING TAKEAWAY – SEIZURE OF PASSENGER DURING A TRAFFIC STOP:

As long as it doesn't unreasonably extend the stop, officers may conduct routine law enforcement procedures during this time – including asking passengers to step out/away from the vehicle to facilitate a search. (See, State v. Rehn, 117 Wn. App. 142, 151, 69 P.3d 379 (2003))

- In addition to obvious officer safety justifications for having passengers exit while the vehicle is searched, there's also a practical need to have them physically out of the way to permit the officer to conduct a thorough search.



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COURT OF APPEALS, DIV. I

TRAINING TAKEAWAY – REQUESTING IDENTIFICATION FROM PASSENGER:

Officers may NOT request identification from a passenger without a valid, independent reason. (See, [Jan. 2019 LED](#), [US v. Landeros](#) (2019))

One permissible reason to request a passenger's ID is to determine whether the passenger is validly licensed and can therefore serve as a reasonable alternative to impounding the vehicle.



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TRAINING TAKEAWAY – TOTALITY OF THE CIRCUMSTANCES:

Police conduct may override otherwise valid consent to search if the totality of the circumstances points to an unreasonable extension of the scope or duration of the stop.

Here, the court found that asking one time about a passenger's prior drug conviction didn't exceed the reasonable scope or duration of the expanded stop.

- WA courts have previously ruled that asking a single question unrelated to the underlying traffic stop is permitted as long as it doesn't measurably expand the scope or prolong the length of the stop. See, State v. Pettit, (2011)



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TRAINING TAKEAWAY – DRIVER'S CONSENT TO SEARCH THE CAR:

Officers only need to get consent from the driver in order to search a car. There is no requirement to also gain consent from passengers.

Warrantless searches can be used against a nonconsenting defendant. See, [State v. Cantrell](#) (1994)



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PRACTICE POINTER:

Avoid Abstract “Officer Safety” Justifications for Warrantless Searches

While officer safety during traffic stops is always a serious concern, the mere “abstract potential” for a weapon to be in a purse does not, on its own, justify a warrantless search.

- Testimony in this case established that the passenger hadn't demonstrated any risk of being armed or dangerous.

Justifying a warrantless search under the general (and uncorroborated) potential that the passenger could regain possession of her purse when the stop ended and that her purse was large enough to hold a weapon is too abstract.



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PRACTICE POINTER – CONSENT

Although she didn't challenge the statements as non-consensual or coerced, the passenger did admit on the stand that she had "probably" been using heroin on the day she was contacted.

While consent isn't automatically invalidated by the consentor's drug or alcohol impairment, consider if relying on consent is the best course of action in your particular contact.

- Does it make more sense to just apply for a warrant (aka do the work up front) than to risk a potentially challenged consent (aka do the work later via motion hearings, evidence suppression, or possibly a prosecutor who doesn't charge the case)?
- How impaired is the consenting party?
- How that may be perceived by the judge or jury even if it is technically "legal."
- What evidence is at stake? Is it critical to proving your case?
- What type of crime are you investigating? Major violent felony, non-violent misdemeanor, etc.?
- How will this situation be viewed by a judge or jury?
- Would you feel comfortable relying on the consenting party's witness statement if they were in this same state?

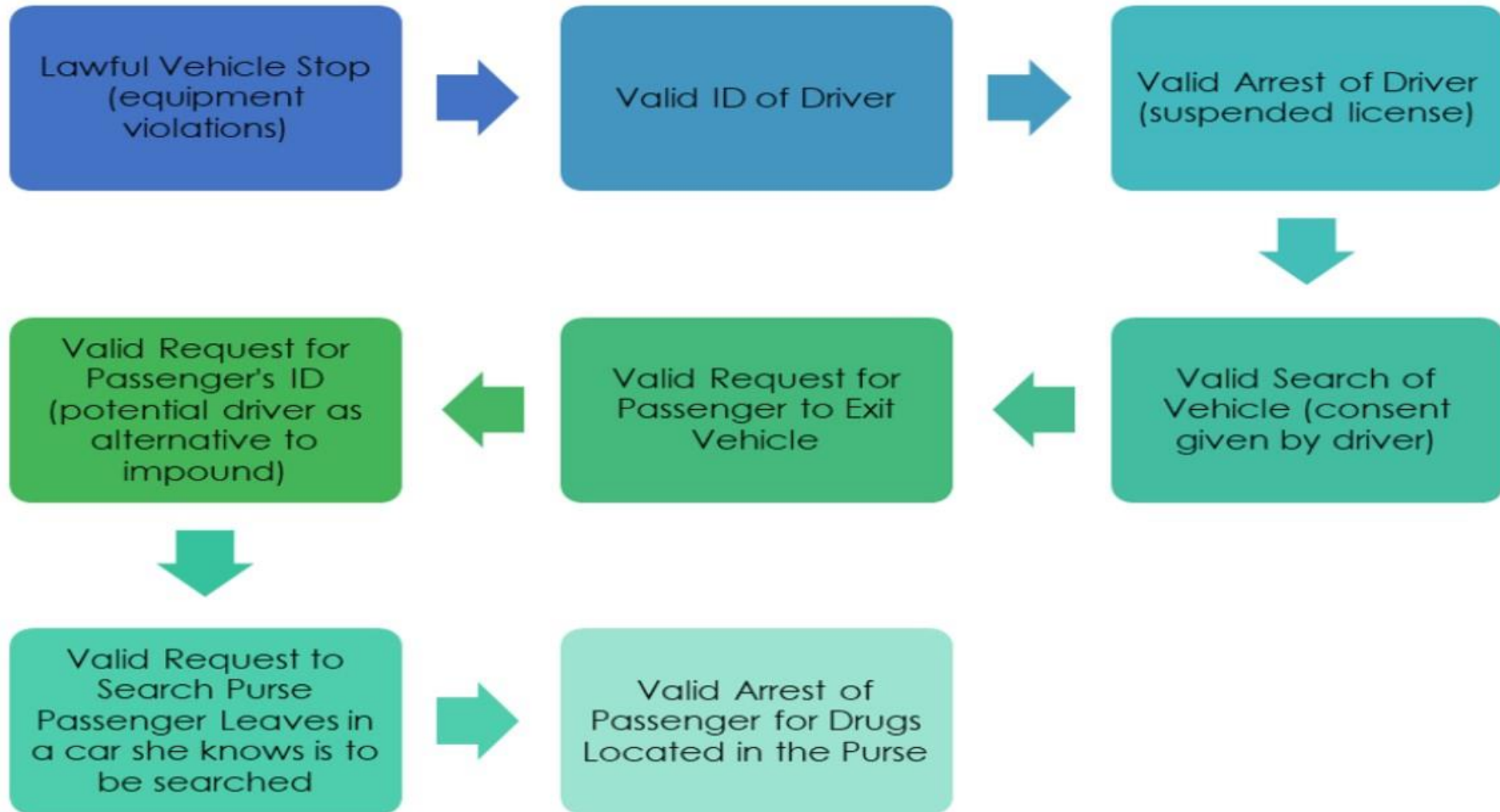
There's no right answer – it will depend on the circumstances - and no substitute for your personal judgment, training, and experience.



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COURT OF APPEALS, DIV. I



2

BREATH TESTING; DUI; WARRANTLESS SEARCH

DRIVING UNDER THE INFLUENCE
[State v. Nelson](#), COA No. 35273-1-III (Feb. 19, 2019)
COURT OF APPEALS, DIV III

FACTS:

Driver was stopped for speeding. Following an investigation, the trooper arrested the driver for DUI. Following his conviction, the driver appealed under a claim that the warrantless breath test performed pursuant to [WA's Implied Consent statute](#) was a violation of Art. 1, § 7 of the WA Constitution.



2

BREATH TESTING; DUI; WARRANTLESS SEARCH

DRIVING UNDER THE INFLUENCE
State v. Nelson, COA No. 35273-1-III (Feb. 19, 2019)
COURT OF APPEALS, DIV III

TRAINING TAKEAWAY:

A warrantless breath test is permitted under the WA Constitution.

The WA Supreme Court's prior ruling in State v. Baird (2016) had previously validated the warrantless collection of a breath sample for the purpose of investigating a DUI under Washington State's Implied Consent statute, RCW 46.20.308.



2

BREATH TESTING; DUI; WARRANTLESS SEARCH

DRIVING UNDER THE INFLUENCE
State v. Nelson, COA No. 35273-1-III (Feb. 19, 2019)
COURT OF APPEALS, DIV III

PRACTICE POINTER – FREE DUI TRAINING AND ASSISTANCE FOR LAW ENFORCEMENT:

If you're interested in additional FREE trainings and resources for law enforcement and prosecutors on DUI-related topics, sign up for a membership to the WA Traffic Safety Resource Prosecutor's website: DUI ENFORCERS to be notified of live trainings, webinars, and more.

The TSRPs are excellent resources for questions on DUI and related criminal traffic questions. They can assist you with connecting your prosecutors to regional and statewide experts on drug recognition, collision reconstruction, and LE training. They're also the fastest way to find your local Target Zero/WA Traffic Safety Commission program managers.

For questions about CJTC's Traffic Program, contact Program Manager Kayla Wold (206.835.7306)



3 EXCLUSIONARY RULE; SEARCH & SEIZURE; CONSENT

POSSESSION WITH INTENT TO DELIVER
[State v. Mayfield](#), No. 95632-4 (Feb. 7, 2019)
WA STATE SUPREME COURT

The Court's opinion in this case contains extensive discussion on the complex interaction between the federal constitution and attenuation doctrine, and our WA state constitution (noted as "Legal Issues" in the following slides). The content of this training is intended to focus primarily on the underlying points most relevant to officers (the usual "Training Takeaway" and "Practice Pointer" slides).

Click on the hyperlink to the full case opinion if you're interested in more information on the legal issues discussed.



3 EXCLUSIONARY RULE; SEARCH & SEIZURE; CONSENT

POSSESSION WITH INTENT TO DELIVER
State v. Mayfield, No. 95632-4 (Feb. 7, 2019)
WA STATE SUPREME COURT

FACTS:

A homeowner came home to find an unfamiliar truck parked in his driveway, with a man asleep in the driver's seat. After the homeowner told the man to leave or he would call the police, the driver tried, but was unable, to start the truck. He ultimately fled through the passenger side door, running away with the door open, the engine on, and the windshield wipers running. The homeowner called police. The responding deputy turned off the truck's ignition, tossed the keys onto the driver's seat, and shut the passenger door. He didn't search for or observe anything in the passenger compartment.

While speaking to the homeowner, the deputy spotted a man walking on the other side of the street. The homeowner identified him as the person he'd seen in the truck. The deputy believed the driver was trying to walk past them unnoticed, which struck him as odd given the truck was registered to him (and wasn't a stolen vehicle.)

When the deputy crossed the road to speak with the man, he first claimed he parked in the homeowner's driveway so he could use the bathroom in the church next door. He then claimed it was because he was having vehicle troubles. The man explained that he fled the truck because he was afraid that the homeowner was about to assault him. At trial, the deputy admitted that he didn't suspect the man of committing any crime, being under the influence of alcohol or drugs, or being armed or dangerous.



3 EXCLUSIONARY RULE; SEARCH & SEIZURE; CONSENT

POSSESSION WITH INTENT TO DELIVER
State v. Mayfield, No. 95632-4 (Feb. 7, 2019)
WA STATE SUPREME COURT

FACTS, CONT.

A second deputy arrived on scene and requested the man's identification and ran him for warrants. Records indicated the man had no outstanding warrants, but was a convicted felon under active DOC supervision, and had prior drug-related contacts. The original responding deputy asked the man about recent drug use, which the man denied.

The deputy then requested to pat the man down, informing him that he could refuse the search. Finding a large amount of bundled cash on the man, the deputy suspected the money was a result of drug transactions. He then asked the man if he could search the truck, informing the man of his right to refuse the search or limit its scope or revoke his consent at any time. The man consented.

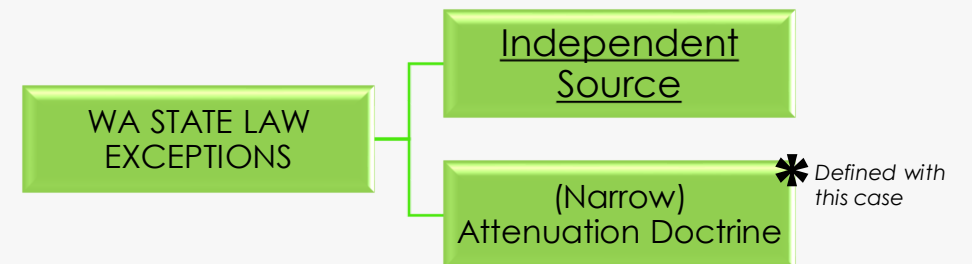
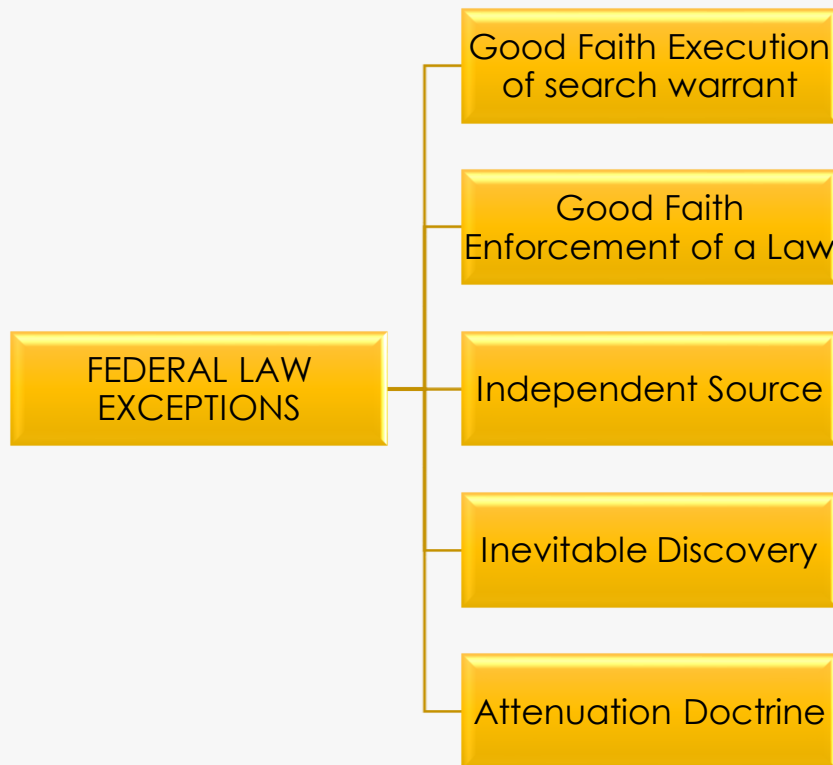
During the search, the deputies discovered methamphetamine in the truck. The driver was arrested for Possession of a Controlled Substance with Intent to Deliver. At trial, the driver moved to suppress the drugs found in the truck, arguing he was unlawfully seized.



3 EXCLUSIONARY RULE; SEARCH & SEIZURE; CONSENT

POSSESSION WITH INTENT TO DELIVER
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The exclusionary rule bars the admission of evidence collected pursuant to a violation of a person's constitutional rights, however the Federal rule (under the 4th Amendment) allows for more exceptions to this rule than Washington (under Art. 1, §.7).



3 EXCLUSIONARY RULE; SEARCH & SEIZURE; CONSENT

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WA STATE SUPREME COURT

LEGAL ISSUE – THE EXCLUSIONARY RULE & THE ATTENUATION DOCTRINE:

The question before the Supreme Court was whether WA State's **exclusionary rule** could be reconciled with the federal **attenuation doctrine**.

- If evidence that falls within the scope of the exclusionary rule leads to the discovery of additional evidence, generally that secondary evidence is excluded as "fruit of the poisonous tree."
- The **attenuation doctrine** permits the admission of evidence obtained in violation of the federal 4th Amendment if the connection between the unconstitutional police conduct and the evidence is remote or was interrupted by an intervening circumstance.



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EXCLUSIONARY RULE; SEARCH & SEIZURE; CONSENT

POSSESSION WITH INTENT TO DELIVER
State v. Mayfield, No. 95632-4 (Feb. 7, 2019)
WA STATE SUPREME COURT

LEGAL ISSUE – THE EXCLUSIONARY RULE & EXCEPTIONS, WA versus FEDERAL:

The WA Supreme Court ruled that Washington's (more restrictive than the federal) exclusionary rule is not incompatible with the attenuation doctrine, but attenuation must be narrowly defined, and applies only where intervening circumstances have genuinely severed the causal connection between the misconduct and the discovery of evidence.

- In this case, there were no intervening circumstances that could satisfy the attenuation doctrine as a matter of law, so the defendant's motion to suppress the drugs and money obtained as a result of the unlawful search should have been granted.



3 EXCLUSIONARY RULE; SEARCH & SEIZURE; CONSENT

POSSESSION WITH INTENT TO DELIVER
State v. Mayfield, No. 95632-4 (Feb. 7, 2019)
WA STATE SUPREME COURT

TRAINING TAKEAWAY – PAT DOWN & VEHICLE SEARCH, CAUSAL LINK:

When a search of the suspect's vehicle is initiated in response to an item discovered in a search of the suspect's person, there is a direct, causal link between the two searches.

- The deputy only searched the truck *after* he found the bundled cash on the defendant during the pat down, and *after* learning that the defendant was on active probation for a drug-related felony.

The two searches are therefore directly related to one another.



3 EXCLUSIONARY RULE; SEARCH & SEIZURE; CONSENT

POSSESSION WITH INTENT TO DELIVER
State v. Mayfield, No. 95632-4 (Feb. 7, 2019)
WA STATE SUPREME COURT

TRAINING TAKEAWAY – CONSENT:

When based off an initial violation of the suspect's constitutional rights, a suspect's consent to search does not satisfy Washington's narrowly defined attenuation exception to the exclusionary rule.

- It was unlawful for the deputy to turn his contact with the suspect into a detention for a drug investigation when the deputy admitted he had no reasonable or articulable suspicion of actual criminal conduct.



3 EXCLUSIONARY RULE; SEARCH & SEIZURE; CONSENT

POSSESSION WITH INTENT TO DELIVER
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WA STATE SUPREME COURT

TRAINING TAKEAWAY – *Ferrier* Warnings:

- (1) Giving *Ferrier* warnings does not overcome the deficiency of an ongoing unlawful seizure for purposes of the attenuation doctrine exception to the exclusionary rule.**

You can't legitimize a search that was initiated while violating a suspect's constitutional rights simply by providing some kind of "magic language."

Ferrier warnings are intended to ensure that a person who has NOT been illegally seized can make an informed decision as to whether they should consent to a search.



3

EXCLUSIONARY RULE; SEARCH & SEIZURE; CONSENT

POSSESSION WITH INTENT TO DELIVER
State v. Mayfield, No. 95632-4 (Feb. 7, 2019)
WA STATE SUPREME COURT

TRAINING TAKEAWAY – *Ferrier* Warnings:

- 2) *Ferrier* warnings should be given in their entirety in order to establish that the suspect gave informed consent to the search based on an independent act of free will.

You can't just let the suspect know of the right to refuse the search, but leave out their right to limit and/or revoke consent to the search.



3 EXCLUSIONARY RULE; SEARCH & SEIZURE; CONSENT

POSSESSION WITH INTENT TO DELIVER
State v. Mayfield, No. 95632-4 (Feb. 7, 2019)
WA STATE SUPREME COURT

TRAINING TAKEAWAY – THE SIMPLIFIED VERSION:



4 SECURE YOUR LOAD TRAFFIC ENFORCEMENT EMPHASIS



JUNE IS “SECURE YOUR LOAD” MONTH!

Officers and agencies wishing to draw attention to “Secure Your Load” traffic enforcement emphasis can find useful resources, PSAs, and other opportunities to educate their communities about the dangers of unsecured loads [here](#), and view the Secure Your Load PSA [here](#).

A Utah patrol officer recently said “one of my biggest fears is to die clearing debris on freeway.” As his story illustrates (view [here](#)), it’s not just civilians who face the danger of being hit by an unsecured load.

King County Solid Waste provides a great resource to distribute in your community or post on your agency’s social media or web pages: [Secure Your Load](#)



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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