



Law Enforcement

JANUARY 2015

Digest

Law enforcement officers: Thank you for your service, protection and sacrifice.

HONOR ROLL

706th Basic Law Enforcement Academy – July 31 through December 9, 2014

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BRIEF NOTES FROM THE WASHINGTON STATE COURT OF APPEALS

LAW ENFORCEMENT OFFICER DID NOT VIOLATE DUI SUSPECT'S RIGHT TO COUNSEL BY STANDING ON THE OTHER SIDE OF THE BAC ROOM AND OUT OF EARSHOT WHEN THE SUSPECT SPOKE TO AN ATTORNEY OVER THE TELEPHONE State v. Fedorov, ___ Wn. App. ___, 335 P.3d 971 (Publication Ordered September 23, 2014).

A law enforcement officer arrested Roman Fedorov for Driving Under the Influence (DUI). The officer transported Fedorov to a local police department with a breath-alcohol concentration machine (BAC room). When Fedorov requested to speak with an attorney, the officer called a public defender on a phone in the BAC room. The public defender requested "complete privacy," but the officer could not leave the BAC room because he needed to observe the suspect for fifteen minutes before the suspect took the breath test. Instead, the officer walked to the other side of the room so that Fedorov "would have to be speaking pretty loud for me to hear." However, Fedorov believed that the officer could hear his statements to the public defender. The public defender believed he could not ask "open ended" questions to Fedorov about the situation because the officer was in the BAC room. Fedorov took the breath test and was charged with DUI.

Before trial, Fedorov asked the trial court to suppress the breath test results because the officer's presence in the room during the phone call with the public defender violated his right to counsel. The trial court agreed that the officer's presence invaded the suspect's right to privately talk to an attorney, but did not suppress the evidence.

The Court of Appeals, Division II, found that the officer's presence in the BAC room while the suspect talked to a public defender did not violate the right to counsel. The Court of Appeals reasoned that the officer's presence in the room does not necessarily violate the right to counsel. Rather, a court should evaluate the facts and circumstances to determine if the officer's presence in the room violated the right to counsel. In this situation, because the officer stood on the other side of the room and could not hear the suspect's conversation with the public defender, the officer did not violate the right to counsel.

FERRIER WARNINGS ARE NOT REQUIRED WHEN AN OFFICER ASKS A DRIVER FOR CONSENT TO SEARCH THE CAR State v. Witherrite, ___ Wn. App. ___, ___ P.3d ___, 2014 WL 6944165 (December 9, 2014).

A law enforcement officer stopped a vehicle for a traffic violation. During the stop, the officer asked the driver for permission to search the car, and informed the driver that she could stop or limit the search at any time. The law enforcement officer did not tell the driver that she had the right to refuse consent to search the car. During the search, the officer found illegal drugs. The driver moved to suppress the illegal drugs, and argued that the search was invalid because the officer did not provide *Ferrier* warnings.

In State v. Ferrier, 136 Wn.2d 103, 960 P.2d 927 (1998), law enforcement officers conducted a knock and talk on a residence and wanted the resident's permission to enter the house to confirm the presence of marijuana. In that case, the Washington Supreme Court held that when an officer asks a resident for permission to enter a home to search for evidence of a crime, the officer must inform the resident that he/she has the right to refuse consent to the search, the right to limit search, and the right to revoke the consent and stop the search.

In this case, the Court of Appeals, Division III, held that an officer does not need to provide a driver with *Ferrier* warnings when asking for consent to search a vehicle. The Court of Appeals

reasoned that *Ferrier* was concerned with the heightened constitutional protections for the home under the Washington state constitution Article I, section 7. However, the Court of Appeals noted "it is undoubtedly best practice to give full *Ferrier* warnings before any consent search in order to foreclose arguments" that evidence found during the search should be suppressed.

STATUTE AUTHORIZING WARRANTLESS SEARCH OF PAROLEES DOES NOT AUTHORIZE WARRANTLESS SEARCH OF A PAROLEE'S IPOD WHEN THE SEARCH DOES NOT RELATE TO A SUSPECTED PAROLE VIOLATION

State v. Jardinez, __ Wn. App. __, 338 P.3d 292 (November 18, 2014)

After missing a scheduled meeting with his community corrections officer, a parolee met with his assigned community corrections office. During the meeting, the officer asked the parolee to provide a urine test. The parolee admitted that a urine test would show marijuana use. The officer asked the parolee to empty his pockets. In response, the parolee placed an iPod Nano on the desk.

When the officer handled the iPod, the parolee appeared nervous. The officer searched the iPod Nano and found a video of the parolee "pumping a shotgun." The parolee admitted that the weapon in the video was a shotgun. Correction officers then searched the parolee's home and found the shotgun.

After being charged with unlawful possession of a firearm, the parolee moved to suppress the evidence the community corrections officer found on the iPod. The trial court granted the motion to suppress.

RCW 9.94A.631(1) authorizes a community correction officer to search a parolee's person, residence, or personal property "[i]f there is reasonable cause to believe that [the parolee] has violated a condition or requirement of the sentence[.]" The Court of Appeals, Division III, held that since the officer did not have "reasonable cause" that the iPod contained evidence of a parole violation (i.e., marijuana use), RCW 9.94A.631(1) did not authorize the parole officer to search the iPod.

VEHICLE CROSSING THE CENTERLINE VIOLATES RCW 46.61.100 AND PROVIDES REASONABLE SUSPICION TO INITIATE A TRAFFIC STOP

State v. Huffman, __ Wn. App. __, __ P.3d __, 2014 WL 7338729 (December 22, 2014)

A law enforcement officer observed a vehicle weaving in its lane for about two miles. This stretch of roadway was straight with no debris. The officer observed the vehicle touch the centerline and immediately jerk back into its lane three times. The officer then saw the vehicle cross the centerline by approximately one full tire width. Based on these observations, the officer stopped the vehicle and arrested the driver for Driving Under the Influence (DUI). The driver moved to suppress evidence by arguing that crossing the centerline was not a traffic infraction and did not provide reasonable suspicion of DUI.

The Court of Appeals, Division I, held that the vehicle crossing the centerline in this situation violated RCW 46.61.100. RCW 46.61.100(1) requires vehicles to drive on the right side of the road, and provides only five exceptions to this requirement. If none of these exceptions apply, it is an infraction to cross the centerline under RCW 46.63.020. None of the five exceptions were present in this case. Consequently, the officer's observation of the vehicle crossing the centerline provided reasonable suspicion to stop the vehicle to investigate a violation of RCW 46.61.100.

The Law Enforcement Digest is edited by Assistant Attorney General Shelley Williams of the Washington Attorney General's Office. Questions and comments regarding the content of the LED are welcome and should be directed to Ms. Williams at ShelleyW1@atg.wa.gov. LED editorial commentary and analysis of statutes and court decisions express the thinking of the editor and do not necessarily reflect the views of the Office of the Attorney General or the CJTC. The LED is published as a research source only. The LED does not purport to furnish legal advice. LEDs from January 1992 forward are available via a link on the CJTC Home Page [<https://fortress.wa.gov/cjtc/www/led/ledpage.html>]
