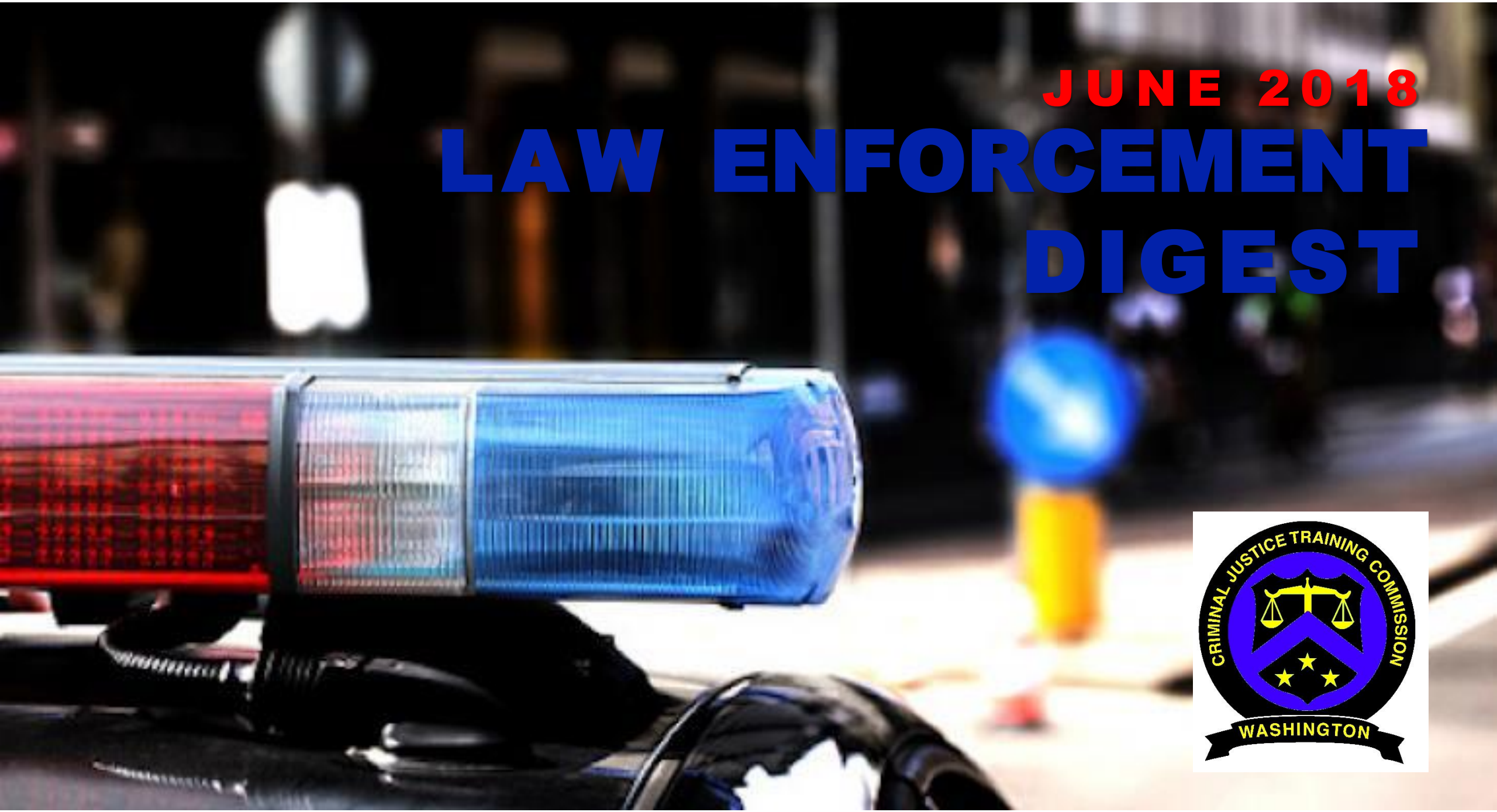


JUNE 2018

LAW ENFORCEMENT DIGEST

CRIMINAL JUSTICE TRAINING COMMISSION
WASHINGTON

LAW ENFORCEMENT ONLINE TRAINING DIGEST

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. Links have also been provided to additional Washington State prosecutor and law enforcement case law reviews and references.

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

JUNE 2018 Edition

Covering Select Cases Issued in MAY 2018

1. FELONY HARASSMENT
2. WARRANTLESS ENTRY; *FERRIER* WARNINGS
3. INVESTIGATIONS; DUE PROCESS; OFFICER MISCONDUCT
4. VEHICULAR HOMICIDE; PERJURY
5. EXCESSIVE FORCE; TORT LIABILITY
6. VEHICLE SEARCH; WARRANTLESS SEARCH
7. INVENTORY SEARCH
8. SEARCH WARRANT; CURTILAGE

Additional Resource Links: Legal Update for Law Enforcement (WASPC, John Wasberg) & Prosecutor Caselaw Update (WAPA, Pam Loginsky)

1 FELONY HARASSMENT

FELONY HARASSMENT

State v. Joseph, COA No. 76308-3-I (April 30, 2018)

Court of Appeals, Division I

FACTS:

Defendant lived with his girlfriend (despite a no-contact order between the two). On the night in question, defendant accused the girlfriend of infidelity, pushed her down, and threatened her with a hammer.

Defendant had a previous conviction for Assault – 3rd Degree, DV for assaulting the same victim.

1 FELONY HARASSMENT

FELONY HARASSMENT

State v. Joseph, COA No. 76308-3-I (April 30, 2018)

Court of Appeals, Division I

TRAINING TAKEAWAY:

A defendant's prior conviction for Assault – 3rd Degree of the same victim is a qualifying predicate offense that can raise a charge of harassment from a gross misdemeanor to a felony.

RCW 9A.46.060 makes Harassment a Felony if the defendant was previously convicted of any crime of harassment against the same victim.

"Crime of Harassment" includes, but is not exclusive to, the list of 28 prior offenses in RCW 9A.46.060, which uses the phrase "included but not limited to" before the list.

Assault in the 3rd Degree is substantially similar to other crimes on the prior offense list, and therefore qualifies as a qualifying prior offense.

2 WARRANTLESS ENTRY; FERRIER WARNINGS

UNLAWFUL POSSESSION WITH INTENT TO DELIVER

State v. Blockman, No. 94273-1 (May 10, 2018)

WA STATE SUPREME COURT

FACTS:

Woman contacts police to report she was assaulted and robbed inside an apartment by the resident and another male. She also stated those two, as well as the defendant in this case, were likely still inside the residence.

Officers go to the apartment to get information on the alleged assault and robbery. The female resident answers the door. Upon hearing why they are there, she invites the officers in to the apartment saying, "I can't believe she called the cops. You can come in. I don't have her money." The officers testified that they told her she didn't have to let them in, but the woman responded, "No, come on in."

The officers then asked the woman if anyone else was in the apartment. She said there were two people in a back bedroom, but did not identify who they were.

2 WARRANTLESS ENTRY; FERRIER WARNINGS

UNLAWFUL POSSESSION WITH INTENT TO DELIVER
State v. Blockman, No. 94273-1 (May 10, 2018)
WA STATE SUPREME COURT

FACTS:

Officers began a protective sweep of the apartment. From the hallway, one officer observed a female place a $20 bill on a table as a male handed her a baggie containing a rock-like substance later identified as cocaine. The officer announced he was police, and the man quickly hid his hands beneath the table.

The female resident was again questioned about the alleged robbery. The officer testified that he again asked her whether she was giving them consent to search, and clarified that she could ask them to stop or limit the search at any time. The female then signed a warrantless search consent form.

The defendant now challenges the evidence gathered from inside the apartment and used against him for the charge of Unlawful Possession with Intent to Deliver, claiming that *Ferrier* warnings were required prior to entering the apartment, and that the warrantless protective sweep was unlawful.

2 WARRANTLESS ENTRY; FERRIER WARNINGS

UNLAWFUL POSSESSION WITH INTENT TO DELIVER
State v. Blockman, No. 94273-1 (May 10, 2018)
WA STATE SUPREME COURT

TRAINING TAKEAWAY – *FERRIER* WARNINGS:

***Ferrier* warnings were not required where officers were only at the home to question the resident about a report of an alleged robbery occurring there, and not to search it.**

Ferrier warnings are required when law enforcement seeks to enter a home to conduct a consensual search for contraband or evidence of a crime.

Ferrier warnings are NOT required when the police seek entry into a home to question a resident in the course of investigating a crime. (*See, State v. Khounvichai*, 2003)

2 WARRANTLESS ENTRY; FERRIER WARNINGS

UNLAWFUL POSSESSION WITH INTENT TO DELIVER
State v. Blockman, No. 94273-1 (May 10, 2018)
WA STATE SUPREME COURT

TRAINING TAKEAWAY – WARANTLESS PROTECTIVE SWEEPS:

The court noted the current split of opinion within the Court of Appeals divisions on whether a warrantless protective sweep is valid in a non-arrest situation, but didn't rule on the issue since the resident's consent to search the apartment permitted the sweep done in this case.

The US Supreme Court has previously ruled that it is constitutional for officers to either (1) conduct a quick-look search of the spaces immediately adjoining the place of arrest without probable cause or reasonable suspicion, or (2) conduct a cursory sweep of a home incident to arrest where they have reasonable suspicion to believe the home is harboring a dangerous third person. It has yet to decide whether such a search can be done in a non-arrest situation.

REMINDER: You should not advise a resident from whom you are seeking consent to search that you "always do protective sweeps" and it is "standard procedure" because the actual right to conduct a protective sweep is limited in nature.

2 WARRANTLESS ENTRY; FERRIER WARNINGS

UNLAWFUL POSSESSION WITH INTENT TO DELIVER
State v. Blockman, No. 94273-1 (May 10, 2018)
WA STATE SUPREME COURT

TRAINING TAKEAWAY – WARANTLESS CONSENT SEARCHES:

Consent is a valid exception to the warrant requirement for a search if:

(1) the consent is voluntary,
(2) granted by a party having authority to consent, and
(3) the search is limited to the scope of the consent granted

EX – Consent to enter a home doesn't give you permission to then search the entire home.

Officers here received permission to enter, as well as permission to conduct a protective sweep and search of the apartment, from the lawful tenant. It did not exceed the permitted scope.

2 WARRANTLESS ENTRY; FERRIER WARNINGS

UNLAWFUL POSSESSION WITH INTENT TO DELIVER
State v. Blockman, No. 94273-1 (May 10, 2018)
WA STATE SUPREME COURT

TRAINING TAKEAWAY – WARANTLESS CONSENT SEARCHES:

Where unequivocal consent for a protective sweep is given by the resident, officers have no obligation to get additional consent from a person present, but who is neither a tenant nor has provided evidence of any legal expectation of privacy within the home.

No evidence was provided to show that the defendant had any claim to privacy in the apartment, so his separate consent was not required for the sweep.

3 INVESTIGATIONS; DUE PROCESS; OFFICER MISCONDUCT

ATTEMPED RAPE OF A CHILD
State v. Solomon, COA No. 76298-2-I (May 29, 2018)
COURT OF APPEALS, DIVISION I

FACTS:

Officer posted an ad on an 18 and over "casual sexual encounter" website requesting anyone interested in sex with a "young female." The 29 year old defendant responded. Posing as a 14 year old, the detective began exchanging messages and photographs with the defendant. After 45 minutes of these exchanges, the detective first revealed her age as 14.

The defendant subsequently sent three messages saying he was no longer interested because she was a minor. The detective continued sending sexually explicit messages to the defendant for the next two hours. At that point, the defendant sent two messages indicating he may be interested, and asked the "girl" to send him photos of naked or in her underwear. He quickly replied saying he took everything back and stated he was worried she was a cop.

3 INVESTIGATIONS; DUE PROCESS; OFFICER MISCONDUCT

ATTEMPED RAPE OF A CHILD
State v. Solomon, COA No. 76298-2-I (May 29, 2018)
COURT OF APPEALS, DIVISION I

FACTS, cont.:

Over the next two days, the detective sent additional sexual messages and encouraged the defendant to have sex with her. They spoke on the phone and exchanged messages for another few days before the defendant agreed to meet the "girl" at her house that night. Defendant was arrested when he arrived at the supposed meeting spot, and had in his possession a condom, cash, a sex toy, and lingerie.

Defendant moved to dismiss the charges against him on the basis that the government's actions amounted to outrageous government misconduct in violation of his due process right to fundamental fairness.

3 INVESTIGATIONS; DUE PROCESS; OFFICER MISCONDUCT

ATTEMPED RAPE OF A CHILD
State v. Solomon, COA No. 76298-2-I (May 29, 2018)
COURT OF APPEALS, DIVISION I

TRAINING TAKEAWAY:

It is outrageous government misconduct that violates a defendant's due process right to fundamental fairness where an officer posed as a 14-year old girl sending over 100 graphic, sexualized messages and solicitations for sex to a defendant who had responded to a fictitious online ad posted to lure would-be sexual predators for underage sexual activity.

Although police may engage in some deceitful conduct and violation of criminal laws in order to detect and eliminate criminal activity, outrageous conduct that is "so shocking" that it violates fundamental fairness is not permitted.

The totality of the government conduct will be evaluated to determine whether the conduct served to prevent crime and the apprehension of violators, versus encouragement of and participation in sheer lawlessness.

3 INVESTIGATIONS; DUE PROCESS; OFFICER MISCONDUCT

ATTEMPED RAPE OF A CHILD
State v. Solomon, COA No. 76298-2-I (May 29, 2018)
COURT OF APPEALS, DIVISION I

TRAINING TAKEAWAY:

The factors weighed in determining if the totality of the government's conduct rose to the level of outrageous misconduct, are whether:

(1) the police conduct instigated a crime, or merely infiltrated ongoing criminal activity;
(2) the defendant's reluctance to commit a crime was overcome by pleas of sympathy, promises of excessive profits, or persistent solicitation;
(3) the government controls the criminal activity, or simply allows for the criminal activity to occur;
(4) the police motive was to prevent crime or protect the public; and
(5) the government conduct itself amounted to criminal activity or conduct "repugnant to a sense of justice."

3 INVESTIGATIONS; DUE PROCESS; OFFICER MISCONDUCT

ATTEMPED RAPE OF A CHILD
State v. Solomon, COA No. 76298-2-I (May 29, 2018)
COURT OF APPEALS, DIVISION I

TRAINING TAKEAWAY:

The initial posting of the online ad for a "casual sexual encounter" on Craigslist (commonly known to include solicitations for and offers to provide illegal sexual activity) was within permissible standards for police to use in weeding out and combatting criminal activity.

It was the subsequent persistent solicitation used to overcome the defendant's multiple rejections of the "girl's" offer of underage sexual activity that tipped this investigation into outrageous government misconduct.

The court found that the police controlled the conduct by initiating it, and then stringing it along over the course of several days.

The court noted that the detective's repeated use of graphic and highly sexualized language amounted to manipulation of the defendant that was repugnant to a sense of justice.

4 VEHICULAR HOMICIDE; PERJURY

VEHICULAR HOMICIDE
State v. Frahm, COA No. 49231-8-II (May 30, 2018)
COURT OF APPEALS, DIV 2

FACTS:

Defendant was driving under the influence when his truck rear-ended an SUV and sent it crashing into the median, and finally coming to rest blocking two lanes of the freeway. Defendant fled the scene. A Good Samaritan witnessed the crash, and parked his own vehicle on the shoulder to provide help. When he got out of his vehicle to assist the injured driver of the SUV, a fourth driver struck the SUV which then spun into the Good Samaritan, killing him. The day after the collision, the defendant reported his vehicle stolen. Subsequent DNA examination verified the defendant's DNA on the deployed airbag of the truck, as well as front end damage. Defendant was arrested. While in jail, the defendant had a cell mate provide a false alibi for him on the night in question.

Defendant was convicted of Vehicular Homicide, Manslaughter in the 1st Degree, Vehicular Assault, Hit and Run, False Reporting, and Intent to Commit Perjury.

4 VEHICULAR HOMICIDE; PERJURY

VEHICULAR HOMICIDE

State v. Frahm, COA No. 49231-8-II (May 30, 2018)

COURT OF APPEALS, DIV 2

TRAINING TAKEAWAY – Proximate Cause:

The defendant was properly convicted of Vehicular Homicide where his initial rear-ending of the first vehicle was the proximate cause of the Good Samaritan victim's death by another car.

Defendant claimed that the "causal chain" was broken when the victim parked his car and got out to render aid, and again when the other driver struck the first vehicle which then hit and killed the victim.

A defendant's conduct is a "proximate cause of harm to another if, in direct sequence, unbroken by any new independent cause, it produces the harm, and without it the harm would not have happened.

A defendant doesn't have to be the SOLE cause of the harm to be held responsible.

The sequence of events or injury that follow from the defendant's act don't have to be foreseeable.

4 VEHICULAR HOMICIDE; PERJURY

VEHICULAR HOMICIDE
State v. Frahm, COA No. 49231-8-II (May 30, 2018)
COURT OF APPEALS, DIV 2

TRAINING TAKEAWAY – Conspiracy to Commit Perjury:

By reaching an agreement with a co-conspirator for that person to provide police a false alibi on the defendant's behalf, the defendant has committed conspiracy to commit perjury, even where the alleged co-conspirator claims that he came up with the plan alone.

Conspiracy to Commit Perjury does require proof of an agreement, but that proof can be in the form of circumstantial evidence – a formal agreement is not necessary.

5 EXCESSIVE FORCE; TORT LIABILITY

ELUDING; §1983 claim
Sluman v. State of Washington, COA No. 34467-3-III (May 22, 2018)
COURT OF APPEALS, DIVISION III

Facts:

A motorcyclist was captured by aerial speed monitoring to be speeding between 6 and 19 miles over the posted 70 mph speed limit on I-90 in Kittitas County. As the motorcyclist exited the highway, he drove past a trooper who was then able to get behind the motorcycle and attempt to initiate a stop on South Thorp Highway. The motorcyclist failed to stop for the trooper (Trooper 1) who decided not to pursue at high speeds since the aerial trooper was able to maintain a visual on the motorcycle. The motorcycle's speed was estimated to have reached up to 120 mph.

A trooper on the ground (Trooper 2) heard radio traffic about the pursuit. He unilaterally decided to join the pursuit, which was against WSP policy. Trooper 2 was directed to stop the pursuit, but continued in his attempt to cut off the speeding motorcyclist where the South Thorp Highway (on which the motorcyclist and Trooper 1 traveled) would intersect I-90, on which Trooper 2 traveled.

5 EXCESSIVE FORCE; TORT LIABILITY

ELUDING; §1983 claim
Sluman v. State of Washington, COA No. 34467-3-III (May 22, 2018)
COURT OF APPEALS, DIVISION III

Facts:

Trooper 2 positioned his car across the centerline at the Yakima River bridge. WSP policy does not permit troopers to drive patrol cars into the lane of oncoming traffic or to park in the middle of the road in a roadblock to stop a fleeing vehicle. Regulation also requires that any roadblock provide an "escape route" for the suspect; only upon supervisory approval; and only when attempting to apprehend a suspect for homicide, assault with intent to kill, rape, robbery in the 1st degree, or prison escape. None of those existed here. Trooper 2 stated that he left an 'escape route,' although he was unaware that the third trooper (Trooper 3) had now pulled up behind him, blocking an additional portion of the roadway.

Trooper 2 testified that he saw the motorcyclist approaching his location at a high rate of speed and then rapidly reducing speed. He stated that his intent was to stop the motorcycle, initiate a felony stop, and take the motorcyclist into custody. He also said that if the motorcycle was going slow enough, but did not stop, he planned to "basically horse collar this person off the motorcycle and end this pursuit, so that they don't end up with serious injuries, kill themselves, kill an innocent party." Tackling, horse collaring, or otherwise physically removing a driver from a motorcycle is not allowed under WSP policy.

5 EXCESSIVE FORCE; TORT LIABILITY

ELUDING; §1983 claim
Sluman v. State of Washington, COA No. 34467-3-III (May 22, 2018)
COURT OF APPEALS, DIVISION III

Facts:

WSP equates driving a vehicle toward a suspect as "intentional intervention," which is considered lethal force. The suspect's actions in this case do not meet WSP policy for use of intentional intervention.

The motorcyclist indicates that he was trying to stop his motorcycle when he saw the vehicle and lights positioned in the middle of the road. Trooper 3 testified that he believed that to be true. As the motorcyclist attempted to pass Trooper 2's vehicle, Trooper 2 opened his door in a "door check" maneuver. This caused the motorcyclist to be knocked from his motorcycle and across the Yakima River Bridge into a campground 30 feet below. The motorcyclist sustained serious injuries. As he came to from his unconscious state, Trooper 2 asked him why he had run from them. The motorcyclist replied that he had warrants for his arrest. He later admitted to having said this (it was recorded), but denies that he was fleeing the officers because he denies even knowing he was being pursued.

The motorcyclist sued WSP and Trooper 2 for violating his civil rights by excessive force. WSP and Trooper 2 were granted summary judgment, and now the motorcyclist appeals as to Trooper 2.

5 EXCESSIVE FORCE; TORT LIABILITY

ELUDING; EXCESSIVE FORCE
Sluman v. State of Washington, COA No. 34467-3-III (May 22, 2018)
COURT OF APPEALS, DIVISION III

TRAINING TAKEAWAY:

The Trooper is not entitled to qualified immunity to a claim of excessive force where the trooper used a "door check" maneuver to knock a fleeing, speeding motorcyclist from his motorcycle.

Were the Trooper's actions a seizure under the 4th Amendment?

Yes. Trooper 2 seized the motororcyclist when he set up a roadblock and "door checked" him as he passed.
Those actions constituted a restriction of the motorcyclist's freedom of movement – a/k/a a seizure.

5 EXCESSIVE FORCE; TORT LIABILITY

ELUDING; EXCESSIVE FORCE
Sluman v. State of Washington, COA No. 34467-3-III (May 22, 2018)
COURT OF APPEALS, DIVISION III

TRAINING TAKEAWAY:

The desire to end a high-speed chase of an unarmed perpetrator does NOT justify the use of lethal force.

"Door checking" the motorcyclist, considered by WSP to be an "intentional intervention" (their policy equivalent to "lethal force,") was unreasonable under the 4th Amendment.

Deadly force may be justified if the suspect threatens the officer with a weapon or probable cause exists to believe that he committed a crime involving the inflicting or threatened infliction of serious physical harm; it is necessary to prevent escape; and if feasible, a warning has been given.

The motorcyclist was originally suspected of speeding. He was not sought for the commission of a crime; not armed; and pursuing troopers couldn't say whether the motorcyclist even knew he was being pursued.

6 VEHICLE SEARCH; WARRANTLESS SEARCH

POSSESSION OF A CONTROLLED SUBSTANCE
Byrd v. United States, No. 16-1371 (May 14, 2018)
UNITED STATES SUPREME COURT

FACTS:

Defendant was stopped by Pennsylvania State Troopers for a traffic violation. He was the driver and sole occupant of a rental car that had been rented by another person. His name was not on the rental agreement as an authorized driver. The troopers believed that meant they could search the car and its trunk without needing the defendant's consent. In performing the search of the trunk, troopers discovered the defendant's personal items, as well as body armor and 49 bricks of heroin. Defendant was charged federally with Unlawful Possession with Intent to Deliver and Unlawful Possession of Body Armor.

The defendant moved to suppress the evidence as the fruit of an unlawful search. Both the trial court and appellate court denied his motion. The Supreme Court is now clarifying the conflicting rulings coming from the different Circuit Courts of Appeal by answering the question of whether a driver has a reasonable expectation of privacy in a rental car when they are not listed as an authorized driver on the rental agreement.

6 VEHICLE SEARCH; WARRANTLESS SEARCH

POSSESSION OF A CONTROLLED SUBSTANCE
Byrd v. United States, No. 16-1371 (May 14, 2018)
UNITED STATES SUPREME COURT

TRAINING TAKEAWAY:

A driver who is the sole occupant in lawful possession or control of a rental vehicle for which he is not an authorized driver on the rental agreement does have a reasonable expectation of privacy in the vehicle.

In order to conduct a search of the vehicle in such a situation, officers would need to obtain the driver's consent, a valid search warrant, or have another valid exception to the warrant requirement.

The Court noted that although allowing the unauthorized driver may have triggered a loss of coverage under the contract, such a breach didn't extend to automatically remove the unauthorized driver's expectation of privacy in the vehicle.

6 VEHICLE SEARCH; WARRANTLESS SEARCH

POSSESSION OF A CONTROLLED SUBSTANCE
Byrd v. United States, No. 16-1371 (May 14, 2018)
UNITED STATES SUPREME COURT

UNRESOLVED ISSUES:

Prior cases distinguish the rights of a party in lawful possession and control of a vehicle, versus a thief who has no expectation of privacy in nor right to exclude in relation to a stolen vehicle.

Lacking in sufficient evidence in the record before them, the *Byrd* Court did not rule on:

1. Whether the driver should be considered more of a thief due to the potentially criminal deception he used to get access to the car, or more of a rightful possessor of the vehicle, and
2. Whether the troopers' warrantless search was authorized by the probable cause automobile exception to the warrant requirement coming from prior 4th Amendment caselaw.

Those issues will be remanded (sent back to the lower court) to be litigated.

NOTE: This case is analyzed under federal 4th Amendment law, which includes an exception to the warrant requirement for probable cause vehicle searches. **Washington's Constitution - Art. 1, Section 7 – prohibits this type of warrantless vehicle search.**

7 INVENTORY SEARCH

POSSESSION WITH INTENT TO DELIVER
United States v. Johnson, No. 15-30222 (May 14, 2018)
9th CIRCUIT COURT OF APPEALS

FACTS:

Defendant had an arrest warrant for a probation violation. Deputies located him at a hotel, and then followed him to a nearby residence. Portland PD was called in to assist with the arrest. The officers waited until the defendant left the residence and drove a couple of blocks before they initiated a stop by loosely blocking him in. The defendant parked the car he was driving in the road. He couldn't provide registration or proof of insurance, and didn't know how the officers could contact the owner.

Searching the defendant following his arrest on the warrant, officers located a pocket knife and $7,100 in cash. Defendant claimed he had recently inherited the cash and was planning to buy a car with it. A tow was initiated in line with agency policy since the vehicle was blocking traffic, and the defendant couldn't provide identifying or contact info for the owner. Officers conducted an inventory search of the car.

7 INVENTORY SEARCH

POSSESSION WITH INTENT TO DELIVER
United States v. Johnson, No. 15-30222 (May 14, 2018)
9th CIRCUIT COURT OF APPEALS

FACTS, cont.:

During the inventory search, officers seized a combination stun gun and flashlight, a glass pipe with white residue, a jacket, and two cellphones. From the trunk, the officers collected a backpack and a duffel bag. One officer testified that wen he moved the backpack and duffel in order to search for other items in the trunk, the bags felt heavy, and the backpack made a metallic "clink" when he set it down.

A search warrant was granted to search the duffel, backpack, and cell phones. Large amounts of methamphetamine, drug paraphernalia, syringes, and a scale were discovered. The defendant was charged with possession with intent to deliver. He moved to dismiss the evidence as fruits of an illegal search, but the district court denied the motion.

7 INVENTORY SEARCH

POSSESSION WITH INTENT TO DELIVER
United States v. Johnson, No. 15-30222 (May 14, 2018)
9th CIRCUIT COURT OF APPEALS

TRAINING TAKEAWAY:

An administrative search (such as a vehicle inventory) may be invalid where the officer's subjective purpose was to search for evidence of potential criminal activity.

An officer's subjective intent is relevant when examining whether an administrative search conducted without individualized suspicion violates a suspect's 4th Amendment rights.

The officers' subjective intent for the search and seizure of items from the defendant's car cannot be justified under the inventory-search doctrine because the officers explicitly admitted that they seized the items in an effort to locate evidence of criminal activity.

7 INVENTORY SEARCH

POSSESSION WITH INTENT TO DELIVER
United States v. Johnson, No. 15-30222 (May 14, 2018)
9th CIRCUIT COURT OF APPEALS

TRAINING TAKEAWAY:

Administrative searches, such as a vehicle inventory search, cannot be used as pretext to search for evidence of a crime.

An inventory search is NON-INVESTIGATIVE.

The purpose of an inventory search is to produce an inventory of the items in a car in order to:
(1) protect an owner's property while it is in custody of the police;
(2) insure against claims of lost, stolen, or vandalized property; and
(3) guard the police from danger.

7 INVENTORY SEARCH

POSSESSION WITH INTENT TO DELIVER
United States v. Johnson, No. 15-30222 (May 14, 2018)
9th CIRCUIT COURT OF APPEALS

TRAINING TAKEAWAY:

A dual motive (one valid, one impermissible) or the mere presence of a criminal investigatory motive doesn't automatically make an administrative stop or search invalid.

The court will look at the circumstances and determine if the search or seizure would have occurred in the absence of the impermissible reason.

The seizure of the cell phones, backpack, and duffel bag would not have occurred in the absence of the impermissible motive (a search for evidence of criminal activity). The contact stemmed from the desire to serve an arrest warrant on the defendant, which happened to occur while he was in a car. There was nothing else to provide sufficient suspicion of criminal activity to justify the seizure.

7 INVENTORY SEARCH

POSSESSION WITH INTENT TO DELIVER
United States v. Johnson, No. 15-30222 (May 14, 2018)
9th CIRCUIT COURT OF APPEALS

PRACTICE TIP:

The officers in this case clearly stated, in reports and testimony, that the purpose of the search was to "gather evidence." That is not the purpose of an inventory search.

If you are "gathering evidence" then you are investigating.

An inventory search is a valid exception to the warrant requirement, and items seized during one may still be admitted against a suspect for purposes of a criminal charge, but not where the inventory is used as a ruse to search for potential evidence of criminal activity. You cannot search or seize items simply because they may be of evidentiary value.

The officers' reports and testimony repeatedly confirmed that they were searching instead of just safekeeping. The selective nature of what officers did and did not seize or log, the manipulation of the bags located in the trunk, and the treatment of the items as evidence rather than property, further indicate that a pure inventory was not the primary intent.

8 SEARCH WARRANT; CURTILAGE

RECEIVING STOLEN PROPERTY
Collins v. Virginia, No. 16-1027 (May 29, 2018)
UNITED STATES SUPREME COURT

FACTS:

Officer believes a motorcycle suspected in two traffic incidents is (1) stolen, and (2) in the possession of the suspect. After seeing a picture on the suspect's Facebook page, the officer drives to the suspect's house, sees a motorcycle covered by a tarp in the same spot in the partially enclosed upper portion of the home's driveway as the suspected stolen motorcycle was in the suspect's Facebook profile. The officer (without any warrant) lifts the tarp off of the motorcycle, locates the VIN, and confirms the motorcycle is stolen. When the suspect returns home, he is arrested for possessing the stolen motorcycle.

The suspect claimed that the officer violated the 4th Amendment by trespassing on the curtilage of his house to conduct the search. His motion to suppress the evidence as an unlawful search was denied by the trial court and the state appellate court. The issue is now reviewed by the US Supreme Court.

8 SEARCH WARRANT; CURTILAGE

RECEIVING STOLEN PROPERTY
Collins v. Virginia, No. 16-1027 (May 29, 2018)
UNITED STATES SUPREME COURT

TRAINING TAKEAWAY:

NOTE: This case is analyzed under federal 4th Amendment law, which includes an exception to the warrant requirement for probable cause vehicle searches. **Washington's Constitution - Art. 1, Section 7 - does not allow for warrantless vehicle searches.**

The Court held that the 4th Amendment exception to the warrant requirement for automobiles does NOT give an officer the right to enter a home or its curtilage to access a vehicle without a warrant.

8 SEARCH WARRANT; CURTILAGE

RECEIVING STOLEN PROPERTY
Collins v. Virginia, No. 16-1027 (May 29, 2018)
UNITED STATES SUPREME COURT

TRAINING TAKEAWAY:

Curtilage = the area adjacent to a home and to which the activity of home life extends.

Remember: A house or other fixed structure includes the curtilage, and being able to see inside the curtilage from a legal vantage point is NOT the same as the right to enter and search the area without a warrant.

If the rule Virginia proposed in this case were permitted, it would create an unequal constitutional right between those who could afford a house with a garage (and therefore keep their vehicles safe from warrantless searches), and those who couldn't (whose vehicles would be subject to warrantless searches because they would be parked/stored in the unprotected curtilage).

8 SEARCH WARRANT; CURTILAGE

RECEIVING STOLEN PROPERTY
Collins v. Virginia, No. 16-1027 (May 29, 2018)
UNITED STATES SUPREME COURT

PRACTICE TIPS:

If you want to lift a cover off of a car or motorcycle during an investigation, GET A WARRANT!

The officer in this case had plenty of evidence to support a search warrant application:

- information provided (or observed firsthand) of a particular motorcycle being involved in two separate traffic incidents;
- a unique description of a motorcycle – orange and black paint, extended frame;
- information about the likely driver/possessor of the motorcycle;
- information to suspect it was a stolen motorcycle;
- clues as to its current location which he was able to confirm by driving to that location; and
- observations consistent that the motorcycle under the tarp was the same one he sought – an extended frame versus a regular frame; parked in the same location where the motorcycle pictured on the suspect's Facebook page was parked.

Had he been working in Washington State, applying for a search warrant would have been the standard course of action.

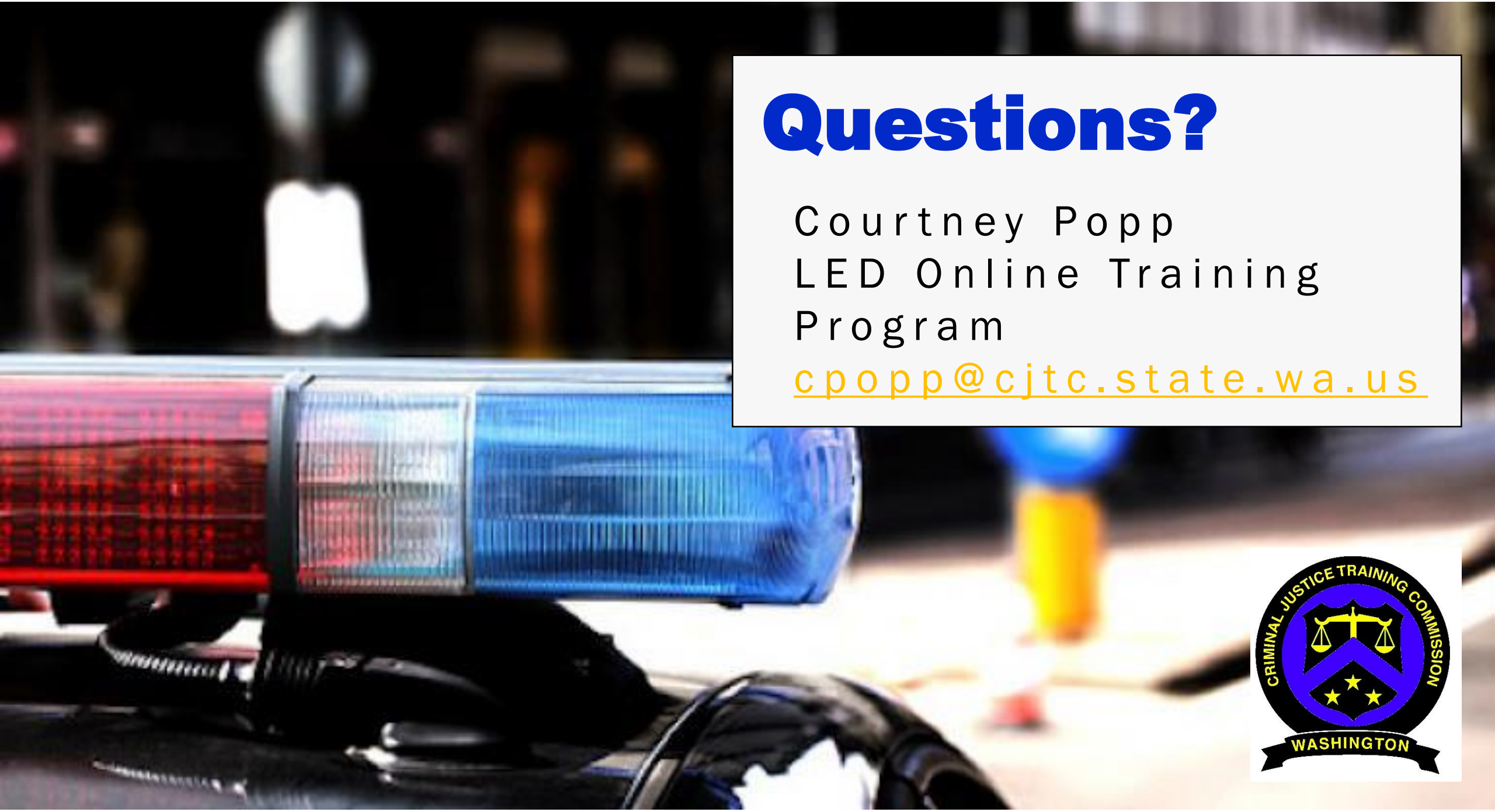
FURTHER READING

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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