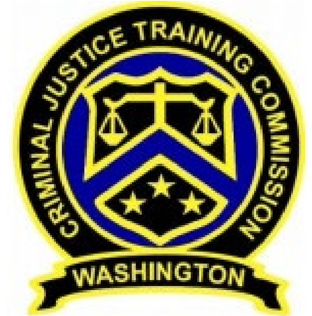
Law Enforcement Digest
March 2023



COVERING CASES PUBLISHED IN MARCH 2023

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Cases in the Law Enforcement Digest are briefly summarized, with emphasis placed on how the rulings may affect Washington law enforcement officers or influence future investigations and charges. Each month's Law Enforcement Digest covers court rulings issued by some or all of the following courts:

- **Washington Courts of Appeals**. The Washington Court of Appeals is the intermediate level appellate court for the state of Washington. The court is divided into three divisions. Division I is based in Seattle, Division II is based in Tacoma, and Division III is based in Spokane.
- **Washington State Supreme Court**. The Washington Supreme Court is the highest court in the judiciary of the U.S. state of Washington. The court is composed of a chief justice and eight justices. Members of the court are elected to six-year terms.
- **Federal Ninth Circuit Court of Appeals.** Headquartered in San Francisco, California, the United States Court of Appeals for the Ninth Circuit (in case citations, 9th Cir.) is a federal court of appeals that has appellate jurisdiction over the district courts in the western states, including Washington, Alaska, Arizona, California, Hawaii, Idaho, Montana, Nevada and Oregon.
- **United States Supreme Court:** The Supreme Court of the United States is the highest court in the federal judiciary of the United States of America.

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CASES

1. *Sinclair v. City of Seattle* 21-35975 (March 1, 2023)
2. *United States v. Taylor* 21-10377 (March 1, 2023)
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WASHINGTON LEGAL UPDATES

The following training publications are authored by Washington State legal experts and available for additional caselaw review:

- Legal Update for WA Law Enforcement authored by retired Assistant Attorney General, John Wasberg
- **Caselaw Update** - WA Association of Prosecuting Attorneys [2018-2021] | [2022]

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- Send Technical Questions to lms@cjtc.wa.gov or use our Support Portal.
- Questions about this training? Linda J. Hiemer, JD| Program Administration Manager Legal Education Consultant/Trainer | lhiemer@cjtc.wa.gov

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

Sinclair v. City of Seattle

No. 21-35975

United States Court of Appeals for the Ninth Circuit

March 1, 2023

TOPICS: Duty to protect, Creation of danger or risk, § 1983 Liability of municipalities

Factual Background

In June of 2020, Seattle residents were protesting the murder of George Floyd in Minneapolis. On June 8, as confrontations escalated between police and protestors, the City of Seattle (the City) withdrew all police officers from the Seattle Police Department's East Precinct, which served Capitol Hill. Protestors blocked off Capitol Hill and "seized a roughly sixteen-block area of Capitol Hill, including Cal Anderson Park." The protestors originally declared the area the Capitol Hill Autonomous Zone, later renamed the Capitol Hill Organized Protest, or CHOP for short.

Plaintiff Sinclair alleged that CHOP participants were seen carrying guns and that violence, vandalism, open drug use, and other crimes "proliferated in the now lawless area." Sinclair alleged that the City did not have an effective plan to provide police or other emergency services to the CHOP. Instead, the City provided occupiers portable toilets, lighting, and other support, including modifying the emergency response protocols of the Seattle Police Department (SPD) and Seattle Fire Department (SFD).

On June 11, Seattle Police Chief Carmen Best allegedly admitted that response times were three times as long as normal, and Mayor Jenny Durkin referred to the CHOP as a "block party." Seattle City Councilmember Kshama Sawant publicly described the CHOP as a "peaceful" occupation, even after it became violent.

On June 20, Sinclair's son, Horace Lorenzo Anderson, Jr, a nineteen-year-old with special needs, visited the CHOP. There, he encountered Marcel Long, whom he knew. Sinclair alleged that Long believed the CHOP to be a no-cop zone, and he was carrying a gun. After Anderson and Long spoke with each other, Long pulled out the gun. Anderson walked away while Long was restrained by others. After breaking free, Long caught up with Anderson and shot him at least four times.

Anderson was carried to a medical tent by CHOP participants. Apparently, Anderson had a pulse when he was laid down on a table in the tent. SFD is alleged to have had an ambulance staged about a block away from Anderson's location. Paramedics were asked to help Anderson, but they were waiting for a green light from SPD. At the same time, SPD was confused about the paramedics' location. As a result of the miscommunication, there was a delay of around 20 minutes before first responders arrived at the tent to treat Anderson.

By the time SPD and SFD arrived at the tent, CHOP participants had transported Anderson to Harborview Medical Center where he was pronounced dead at 2:53 a.m.

The record indicates that before the establishment of the CHOP, there had been no homicides in the prior six months in Capitol Hill. There were only three homicides in the entire area in 2019. In contrast, during the nine days of the CHOP, there were several shootings, one other homicide, and numerous other crimes of violence.

Sinclair brought a private action in federal court under 42 U.S.C. § 1983, commonly referred to as a Section 1983 claim, in her individual capacity as the mother of Anderson, and sought to hold the City liable for violating her Fourteenth Amendment substantive due process right to the companionship of her adult son. Sinclair alleged that the City's actions and failures to act regarding the CHOP created a foreseeable danger for her son and that the City was deliberately indifferent to that danger.

The federal district court dismissed the case for the failure to state a claim upon which relief may be granted.

Sinclair appealed.

Analysis of the Court

In this case, Sinclair alleged that the City violated her Fourteenth Amendment substantive due process right to companionship with her son by creating an actual and particularized danger to him and by acting with deliberate indifference towards saving his life.

The Due Process Clause of the Fourteenth Amendment provides that **"[n]o State shall … deprive any person of life, liberty, or property, without due process of law."** The Supreme Court has recognized parental constitutional rights to the care, custody, and control of minor children. The Ninth Circuit has recognized "a 'fundamental liberty interest' in 'the

companionship and society of [one's] child' for which '[t]he state's interference with that liberty interest, without due process of law, is a violation under 42 U.S.C. § 1983."

But the Supreme Court has not decided whether parental rights to the companionship of a child continue after the child reaches the age of majority. The Ninth Circuit noted that it has never expressly expounded on the question but that it had implicitly recognized that parents maintain a constitutionally protected liberty interest in the companionship of their adult children. It noted that prior case law had assumed that the right may be violated even when the relationship is not the target of state action. Therefore, in line with its precedents, the Ninth Circuit determined that Sinclair possessed a constitutional right to the companionship of her adult son.

The Court then turned to the question of whether Sinclair had alleged that the City's actions with respect to CHOP violated her substantive due process rights. The Court noted that although Sinclair brought her action to vindicate an alleged deprivation of her own right, her theory of liability was derivative of her son's underlying right: She alleged that the City violated her right to the companionship of her son by violating his right to be free from state-created danger.

Generally, **"members of the public have no constitutional right to sue state [actors] who fail to protect them against harm inflicted by third parties." One exception to that rule is the state- created danger doctrine. Under the state-created danger doctrine "the state may be constitutionally required to protect a plaintiff that it affirmatively places in danger by acting with deliberate indifference to a known or obvious danger."**

To succeed on a state-created danger claim, a plaintiff must establish that 1) a state actor's affirmative actions created or exposed them to "an actual, particularized danger [that they] would not otherwise have faced," 2) that the injury they suffered was foreseeable, and 3) that the state actor was deliberately indifferent to the known danger.

The City challenged the first and third elements. It did not contest that its actions resulted from municipal policy. Given the roles of the chief of police, the mayor, and the city councilwoman, the facts alleged strongly established the municipal policy that guided the City's allegedly tortious behavior, which established this element of the lawsuit. The Court held that Sinclair properly alleged that the City acted with deliberate indifference. Sinclair failed, however, to allege that the City created a danger that was both actual and particularized to her or her son.

"Only official conduct that 'shocks the conscience' is cognizable as a due process violation." On the record alleged in this case, where the official conduct followed an opportunity for actual deliberation, that standard is met by a showing that the defendant acted with deliberate indifference.

Thus, the Court reasoned, **to make out a successful claim under the state-created danger doctrine, a plaintiff must allege facts sufficient to establish that the defendant acted "with 'deliberate indifference' to a 'known or obvious danger.'"** This is a stringent standard of fault. **The defendant "must 'recognize the unreasonable risk and actually intend to expose the plaintiff to such risks without regard to the consequences to the plaintiff.'" "Ultimately, a state actor needs to know that something is going to happen but ignore the risk and expose the plaintiff to it."**

In this case, Sinclair's allegations supported the strong inference that the City acted with deliberate indifference toward the dangers of permitting and encouraging the establishment of the CHOP zone. It was self-evident that the SPD's wholesale abandonment of its East Precinct, combined with Mayor Durkan's promotion of CHOP's supposedly festival-like atmosphere, would create a toxic brew of criminality that would endanger City residents. Sinclair's allegations that "City Council Member Kshama Sawant publicly and recklessly framed CHOP as a 'peaceful' occupation even after it became violent," and that Police Chief Carmen Best wondered aloud after a second homicide in CHOP *"why we could continue to allow this to happen,"* all supported the inference that City officials knowingly exposed the public to a danger against which the officials did almost nothing to protect against. Freedom to assemble and to speak are constitutionally protected; violence is not.

The Court agreed with the district court, however, in holding that Sinclair's allegations about the City's response after Anderson had been shot did not show deliberate indifference. Sinclair did not dispute that medics tried to provide Anderson care and that the City did not prohibit them from doing so. And Sinclair agreed that their delayed response stemmed from a miscommunication about whether they were approved to enter the CHOP. SFD had even positioned an ambulance a block and a half away from the CHOP medical tent where Anderson was carried. Had the City been deliberately indifferent to Anderson's particular plight, they would have ignored CHOP participants' pleas for help altogether. They did no such thing.

In sum, Sinclair had properly alleged that the City was deliberately indifferent to the dangers of CHOP, but not deliberately indifferent in its response to Anderson's ensuing injuries or in the provision of medical care to him.

The Court next turned to Sinclair's state-created danger claim, in general. It noted that for a plaintiff to prevail on a state-created danger claim, **the government must "affirmatively create an actual, particularized danger that the plaintiff would not otherwise have faced."** The Court believed that Sinclair's allegations supported a conclusion that the City created an actual danger, but not a particularized one.

In evaluating the claim, the Court accepted Sinclair's allegations as true. Sinclair showed that the City affirmatively created the actual danger Anderson—and by extension Sinclair—faced. Most relevant, Sinclair alleged that the City: 1) left behind barriers the CHOP occupiers used to block streets off from general traffic and emergency responders; 2) provided portable toilets, lighting, and other support to the occupiers that allowed the lawless violence to persist; and 3) lured visitors to CHOP with promises of safety and a block party atmosphere.

In construing these allegations in the light most favorable to Sinclair, the Court found it plausible that these actions, combined with the City's withdrawal of law enforcement from CHOP, incubated a more lawless and violent environment compared to the status quo. Sinclair argued that "had the City not provided barricades and other material support to CHOP ... people like

Anderson's murderer would not have been emboldened to undertake in criminal activity." The Court found that her allegations, if proven, would support that conclusion.

The Court determined that while Sinclair adequately alleged that the City created, or at least significantly contributed to, the danger her son faced, she failed to allege that the danger was sufficiently particularized to support a § 1983 claim.

The Court noted that **a "particular" danger is a danger "of, relating to, or being a single person or thing. A "particularized" danger, naturally, contrasts with a general one.** But, the Court reasoned, any danger the City created or contributed to by enabling the CHOP zone affected all CHOP visitors equally; the danger was not specifically directed at Sinclair or Anderson. The dangers that Anderson faced as a result of the City ignoring the lawlessness and crime occurring in CHOP were the same as anyone else; the City did not create a danger that posed a specific risk to Sinclair.

A danger is "particularized" if it is directed at a specific victim. Here, Sinclair failed to allege that the City had any previous interactions with her son, directed any actions toward him, or even knew of her son's existence until he was killed. Instead, she "alleged that the City left all visitors to CHOP in a much more dangerous position than it found them in." Even construed in the light most favorable to Sinclair, her allegations demonstrated that the City-created danger was a generalized danger experienced by all those members of the public who chose to visit the CHOP zone.

In sum, while the City created an actual danger of increased crime, that danger was not specific to Anderson or Sinclair. Thus, Sinclair's § 1983 claim fails.

The Court noted that the City's conduct was egregious. But because the City's actions were not directed toward Anderson and did not otherwise expose him to a specific risk, the connection between Sinclair's alleged injuries and the City's affirmative actions was too remote to support a § 1983 claim. Consequently, the Ninth Circuit upheld the lower district court's ruling to dismiss.

Training Takeaway

In this case, the Court acknowledged that it was an absolute certainty that a mother possesses a substantive due process right to the companionship of her adult son. However, in general, members of the public have no due process right to sue state actors who fail to protect them against harm inflicted by third parties. One exception to this rule is the state-created danger doctrine, under which a state may be constitutionally required to protect someone that it affirmatively placed in danger by acting with deliberate indifference to a known or obvious danger.

To succeed on a substantive due process claim pursuant to the state-created danger doctrine, a plaintiff must show that 1) the state actor's affirmative actions created or exposed the plaintiff to actual, particularized danger that they would not otherwise have faced, 2) the injury they suffered was foreseeable, and 3) the state actor was deliberately indifferent to the known danger.

To make out a successful due process claim under the state-created danger doctrine, the plaintiff must allege facts sufficient to establish that the defendant acted with deliberate indifference to a known or obvious danger. That is, that the defendant recognized unreasonable risk and actually intended to expose the plaintiff to such risks without regard to the consequences to the plaintiff. Only official conduct that shocks the conscience is cognizable as a due process violation.

In this case, the Seattle fire department did not act with deliberate indifference in its response to a shooting victim's injuries or in the provision of medical care to the victim. Thus, it did not violate the victim's mother's substantive due process right to the companionship of her adult son under the state-created danger doctrine. This is so even though there was a 20-minute delay in responding to the emergency. The fire department's delayed response stemmed from a miscommunication about whether medics were approved to enter the CHOP, where the victim had been carried.

For the purposes of a substantive due process claim under the state-created danger doctrine, "danger" is particularized if it is directed at a specific victim.

EXTERNAL LINK: View the Court Document

United States v. Taylor

No. 21-10377

United States Court of Appeals for the Ninth Circuit

March 1, 2023

TOPICS: Prolonged traffic stops, reasonable suspicion, consent to search

Factual Background

On July 10, 2020, Officers Gariano and Alvarado were patrolling in Northeast Las Vegas when they spotted a car with no license plate and no temporary registration tags. The officers stopped the car, which was being driven by Taylor. Taylor had no driver's license or other means of identification.

When Officer Gariano asked Taylor if he knew why he had been pulled over, Taylor said that he did and explained that he had just bought the car from his aunt. Gariano then asked Taylor whether the vehicle contained any "guns/knives/drugs," and Taylor said, "no." Gariano then asked whether Taylor had been arrested, and Taylor responded that he was on parole for being a felon in possession of a firearm.

Officer Gariano later testified that "everything changed" when he learned that Taylor had been convicted for being a felon in possession of a firearm because he became concerned that Taylor might be armed. Gariano asked Taylor if he was in violation of his supervision conditions or if he had weapons on him, which Taylor denied. Gariano asked Taylor to step out of the car, and Taylor complied.

Once Taylor got out of the car, the officers noted that he was wearing an unzipped red fanny pack slung across his upper body. The unzipped fanny pack appeared to be light and empty. Gariano asked Taylor to remove the fanny pack, and, in the process, Gariano touched, slightly opened, and lifted the pack. At trial, both officers explained that the empty fanny pack aroused their suspicions because, as Officer Alvarado testified, *"it's known that's where subjects primarily sometimes conceal weapons."* Gariano also testified that, *"we've been seeing an... uptick of people concealing firearms in fanny packs that are slung around their body,"* and that he, *"just wanted to make sure that there [were] no weapons on his person at that point."*

Alvarado chatted with Taylor while he frisked him. The two recognized each other from when Alvarado was a corrections officer at the prison where Taylor was previously incarcerated. The interaction was described as "calm" and "friendly." At the same time, Gariano returned to his patrol car and ran a criminal history check on Taylor and confirmed his identity. By this time, about three minutes and forty seconds had elapsed.

Gariano learned that Taylor had at least two previous felony convictions for grand larceny and robbery. Gariano exited the patrol vehicle and asked Taylor for consent to search his car.

Body cam video recorded the following interaction:

GARIANO: *Is there anything in the car?*

TAYLOR: *No, no I just got it from my aunt.*

GARIANO: *No guns?*

TAYLOR: *No, sir.*

GARIANO: *Alright if we check?*

TAYLOR: *It don't matter, I just got it, I just got it, it don't matter to me.*

Gariano searched the car for less than a minute and found a handgun under the driver's seat. Taylor was then placed under arrest by Alvarado. Taylor received his Miranda warnings. He then admitted to the officers that he carried the gun for protection, and that he normally placed it in the red fanny pack but kept it under the seat while he was driving.

Taylor was indicted by a federal grand jury for being a felon in possession of a firearm. Taylor filed a motion to suppress the evidence of the handgun and his statements as the fruits of an unlawful seizure and search. He argued that officers prolonged the traffic stop without reasonable suspicion and searched his car without proper consent.

The district court found that once officers observed Taylor's unzipped fanny pack, under the totality of the circumstances they had a reasonable suspicion to believe that Taylor was a felon in possession of a firearm and so the stop was not unlawfully prolonged. On the consent question, the district court found that Taylor voluntarily consented to the search of his car. The motion to suppress was denied.

Taylor entered a conditional guilty plea and preserved his right to appeal the denial of the motion to suppress. He was sentenced to twenty months in prison and three years of supervised release. Taylor appealed.

Analysis of the Court

The Court began its inquiry by noting that under the Fourth Amendment, **a seizure for a traffic stop is "a relatively brief encounter," more analogous to a so-called Terry stop than to a formal arrest. To be lawful, a traffic stop must be limited in its scope: an officer may "address the traffic violation that warranted the stop," make "ordinary inquiries incident to the traffic stop," and "attend to related safety concerns." The stop may last "no longer than is necessary to**

effectuate" these purposes and complete the traffic "mission" safely. However, a stop "may be extended to conduct an investigation into matters other than the original traffic violation" so long as "the officers have reasonable suspicion of an independent offense."

In this case, it was undisputed that the officers had a proper basis for stopping Taylor: he was driving without license plates or temporary tags. Once Taylor was stopped, Gariano was permitted to ask Taylor basic questions, such as whether Taylor knew why he had been pulled over, whether he had identification, whether he had been arrested before, and whether he had any weapons in the vehicle. These are "ordinary inquiries" incident to a traffic stop made as part of "ensuring that vehicles on the road are operated safely and responsibly," and "negligibly burdensome precautions" that an officer may take "in order to complete his mission safely."

In this case, as is typical, these inquiries took mere seconds and were within the mission of the stop. Gariano did fleetingly mention drugs in the same breath that he asked about weapons, but Taylor gave a single answer to the combined question, and this did not measurably prolong the stop.

It didn't matter that Gariano asked about weapons a second time within the first 90 seconds of the stop, after Taylor had already responded in the negative. The Court noted that there is no strong form "asked and answered" prohibition in a Fourth Amendment analysis, **the touchstone of which is reasonableness**. Asking two questions about weapons early in the encounter was a negligibly burdensome precaution that Gariano could reasonably take in the name of officer safety. The two questions did not unreasonably prolong the stop.

Gariano also did not unreasonably prolong the stop when he asked Taylor to step out of the vehicle. The Supreme Court has long held that **police officers during a traffic stop may**

ask the driver to step out of the vehicle. "It is well established that an officer effecting a lawful traffic stop may order the driver and the passengers out of a vehicle " ***Pennsylvania v. Mimms*. The** rationale is officer safety: "traffic stops are 'especially fraught with danger to police officers,'" and when it comes to having a driver stand outside his vehicle, the "legitimate and weighty" justification of officer safety outweighs the "additional intrusion" on the driver, which "can only be described as de minimis." Once outside the stopped vehicle, the driver may also "be patted down for weapons if the officer reasonably concludes that the driver 'might be armed and presently dangerous.'"

By this authority, the Court reasoned, Gariano did not unlawfully prolong the traffic stop when he asked Taylor to exit the vehicle. Taylor argued that once he disclosed his felon in possession conviction, officers pivoted to a fishing expedition into whether Taylor might have a firearm. The Court didn't buy that argument. It noted that the officers' subjective motivations are irrelevant because **"the Fourth Amendment's concern with 'reasonableness' allows certain actions to be taken in certain circumstances, whatever the subjective intent."** Prior case law has made clear that officers could have Taylor exit his vehicle in the interest of officer safety. This is regardless of whether the officers may have subjectively believed they were on to something more than a vehicle lacking license plates. The officers' subjective motivations, the Court opined, could not change the objective reasonableness of their actions.

At this point, the Court had only considered the officers' conduct before Taylor exited his car, and it found that it formed part of the lawful traffic stop.

Taylor argued, however, that the remaining portion of his seizure was too attenuated from the traffic stop. From Taylor's perspective, once he was outside the car, the stop was unconstitutionally prolonged, meaning that the later discovered gun and Taylor's own inculpatory statements should have been suppressed.

The Court noted that it could approach this issue in two different ways, with both paths leading to the same answer: the officers did not violate the Fourth Amendment.

The first ground for affirmance on this point was that Gariano's criminal history check and the officers' other actions while Taylor was outside the car were within the lawful scope of the traffic stop. Gariano did not improperly prolong the stop when he spent a few minutes consulting computerized databases in his patrol car.

In ***United States v. Hylton*****, the Ninth Circuit specifically rejected the argument that a "criminal history check is a prolongation of the stop and need[s] to be supported by independent reasonable suspicion." Instead, it held that "because a criminal history check 'stems from the mission of the stop itself,' it is a 'negligibly burdensome precaution' necessary 'to complete the stop safely.'"**

Taylor asserted that Hylton should not control because in his case the officers knew or should have known that Taylor posed no danger when he was compliant during the stop, which had friendly overtones. Taylor again improperly focused on what the officers might have subjectively believed when what matters, under Hylton, was that conducting a criminal records check in connection with a traffic stop is objectively reasonable. In this case, the officers did not abandon the traffic stop and acted properly under Hylton. It is true that Taylor was compliant, but a driver acting cooperatively does not prevent police from performing actions that are permissibly within the mission of a traffic stop. Regardless, the officers clearly did have a basis to believe that Taylor posed a danger.

Taylor pointed out that officers began the process of checking him for weapons before Gariano went to his patrol car to check his criminal history, claiming that this part of the pat-down also unreasonably extended the stop. But the Court already noted, officers in the course of a lawful investigatory stop of a vehicle may pat down the driver for weapons **"if the officer reasonably concludes that the driver 'might be armed and presently dangerous.'"** Here, the officers could have had that reasonable suspicion once they observed Taylor fully outside of the vehicle.

The Court observed that the reasonable suspicion standard **"is not a particularly high threshold to reach" and is less than probable cause or a preponderance of the evidence. The standard allows officers to make "commonsense judgments and inferences about human behavior." In doing so, officers may "draw on their own experience and specialized training" to arrive at conclusions "that might well elude an untrained person."**

When Gariano asked Taylor to exit the vehicle, the officers knew that Taylor was driving a vehicle without license plates or registration tags, that he lacked identification, and that he was on federal supervision for being a felon in possession of a firearm. But once Taylor stepped out of the car, officers had another data point: Taylor's distinctive unzipped fanny pack slung across his chest.

Both officers testified that fanny packs are commonly used to store weapons. Gariano noted that police had seen "an uptick" in this behavior. The district court did not clearly err in crediting the officers' testimony. That the fanny pack was empty and unzipped added to the reasonable suspicion. As Officer Alvarado testified, it was "odd" that Taylor had the fanny pack "on his person" when "there was nothing in it."

The Court recognized that standing alone, **a fanny pack is not necessarily an unusual item of apparel. It certainly did not suggest that officers have reasonable suspicion to frisk anyone who wears that accessory**. But in this case, the fanny pack was curiously empty and unzipped, and it did not stand on its own: officers had just pulled Taylor over for driving without license plates, Taylor had no identification, and, most critically, Taylor had just disclosed that he was on federal supervision for being a felon in possession of a firearm. When combined with the officers' experience with fanny packs, the totality of the circumstances created reasonable suspicion that Taylor might have a gun that he was not permitted to have.

As mentioned earlier, there is another pathway to affirming the denial of Taylor's motion to suppress: even if officers prolonged the encounter beyond the original mission of the traffic stop, they had a sufficient basis to do so. The officers knew about Taylor's traffic offenses and that he was on federal supervision for being a felon in possession, and once Taylor stepped out of the car, the officers could clearly see Taylor's unzipped, empty fanny pack. At that point, under the totality of the circumstances, officers had "reasonable suspicion of an independent offense." Thus, the Court noted, even if the frisk and criminal history check were beyond the mission of the traffic stop (which would be contrary to precedent), they were still permissible based on the officers' reasonable suspicion of an independent offense: Taylor's unlawful possession of a gun.

The Court then turned to the search of Taylor's car.

It noted that **warrantless searches are presumptively unreasonable under the Fourth Amendment, subject to certain exceptions. Consent is one such "specifically established" exception. Police may search a car when they are given "voluntary," "unequivocal[,] and specific" consent.**

The Court held that the district court did not err in concluding that Taylor's consent was voluntary. **It analyzed the voluntariness of Taylor's consent based on "the totality of all the circumstances," and focused on five non-exclusive factors: 1)**

whether defendant was in custody; 2) **whether the arresting officers had their guns drawn; 3) whether Miranda warnings were given; 4) whether the defendant was notified that they had a right not to consent; and 5) whether the defendant had been told a search warrant could be obtained." A defendant's consent is not voluntary "if [their] will has been overborne and [their] capacity for self-determination critically impaired."**

In this case, Taylor was not in custody, so Miranda warnings were not given nor required. The officers did not have their guns drawn and they never threatened Taylor that a search warrant could be obtained if he refused consent. The Court believed that these factors all suggested that Taylor's consent was voluntary.

The government was not required to prove that Taylor knew he had a "right to refuse consent" as a "necessary prerequisite to demonstrating a 'voluntary' consent." Even so, that officers never informed Taylor he had a right not to consent is at least a factor that weighs against voluntariness.

Finally, citing "racial disparities in the policing of America," Taylor argued that the Court should treat his consent as involuntary because the officers are of a different race than him. The Court rejected this argument. The Court observed that although tensions between officers and suspects "may be heightened by personal experiences and other sociocultural factors," there was no evidence in this case that race affected the voluntariness of Taylor's consent.

The Court pointed out that Taylor's consent was also unequivocal and specific, and it included consent to search the interior of the car for guns. It noted that a suspect may "unequivocally and specifically" consent by giving express permission, or consent can be inferred from conduct, such as a head nod. Ultimately, the test **"is that of 'objective' reasonableness —what would the** typical reasonable person have understood by the exchange between the officer and the suspect?"

Here, the district court did not err in finding that Taylor unequivocally and specifically consented to a search of his car for firearms. When Gariano asked if there were guns in the car and then asked if he could "check," Taylor unambiguously responded, "it don't matter to me." In context, a reasonable person would have understood Taylor to be consenting to a search of the car for firearms in locations where a gun might be concealed. Taylor's suggestion that he was only consenting to officers walking around the car and looking in the windows was not objectively reasonable given the nature of the exchange.

The Ninth Circuit held that the officers did not violate the Fourth Amendment when searching Taylor's car.

Training Takeaway

Under the Fourth Amendment, a seizure for a traffic stop is a relatively brief encounter, more analogous to a Terry stop than to a formal arrest. To be lawful, the traffic stop must be limited in its scope: an officer may address the traffic violation that warranted the stop, make ordinary inquiries incident to the traffic stop, and attend to related safety concerns. A traffic stop may last no longer than is necessary to effectuate the purposes of the Fourth Amendment and complete the traffic mission safely. However, a traffic stop may be extended to conduct an investigation into matters other than the original traffic violation so long as the officers have reasonable suspicion of an independent offense.

With relation to the vehicle search, the Court noted that warrantless searches are presumptively unreasonable under the Fourth Amendment, subject to a few well-delineated exceptions.

Consent is a specifically established exception to the search warrant requirement. Police officers may search a car when they are given voluntary, unequivocal, and specific consent.

A suspect may unequivocally and specifically give consent to search by giving express permission, or consent may be inferred from conduct, such as a head nod. The test for whether a suspect unequivocally and specifically consented to a search is that of objective reasonableness. Meaning, what would the typical reasonable person have understood by the exchange between the officer and the suspect?

EXTERNAL LINK: View the Court Document

Washington v. Meredith

No. 100135-5

Supreme Court of Washington

March 16, 2023

TOPICS: Searches and seizures, Routine encounters, Consent to search

Factual Background

On March 28, 2018, Zachery Meredith boarded a "Swift Blue Line" bus in Snohomish County. The Swift Blue line is a Community Transit service that uses a "barrier free payment system." This system allows passengers to pay up front and doesn't require them to pass through turnstiles, gates, or other barriers before boarding the bus. While riding the Swift Blue Line, passengers may board through one of three doors on the bus, and the bus will stop at each station for about 10 seconds.

Snohomish County Sheriff's Deputy Thomas Dalton and his partner were conducting fare enforcement on the Swift Blue Line that day, pursuant to RCW 36.57A.235. Additionally, Sergeant Louis Zelaya was following the bus in his patrol car as the back-up officer. All three officers were in full uniform, and at least Deputy Dalton was armed.

Meredith was already on the bus when Deputy Dalton and his partner boarded to conduct "a special op on fare enforcement." Deputy Dalton never observed Meredith getting on the bus without paying, either in person or on video. As the bus was moving towards the next stop, the deputies approached each bus rider and asked for proof of payment or an ORCA card. The deputies worked from the back to the front.

On this day, the deputies contacted three people for failing to provide proof of payment. Consistent with their usual procedure, the deputies radioed Sergeant Zelaya and notified him that they were going to get off at the next bus stop and deal with the three people on the next platform.

Meredith was one of the three individuals who were not able to present proof of fare payment, so upon reaching the next stop, he was detained by Deputy Dalton outside the bus on the bus platform. The deputy's standard practice was to determine the history of transit violations, so he asked Meredith to identify himself. Meredith did not possess any I.D., but he gave the deputy a name and

date of birth, which turned out to be false. The deputy attempted to run the information twice but did not get any results. After the second attempt, Deputy Dalton placed Meredith in handcuffs, but did not advise him of his Miranda warnings.

Around this time, Sergeant Zelaya arrived on the scene. Zelaya had a portable biometric fingerprint reader called "Mobile ID," which allows officers to scan the index finger of an individual and use that information to run a check through the Automatic Fingerprint Identification System (AFIS, Washington State Patrol, and the Federal Bureau of Investigation. At the time, the Mobile ID device had been recently acquired by the Snohomish County Sheriff's Office through a pilot program and was being used when officers already had probable cause for someone's arrest but were unable to identify them through other means.

Because Deputy Dalton did not yet know Meredith's identity, he couldn't know whether Meredith had "failed to pay the required fare on more than one occasion within a twelve-month period." Even still, rather than issuing Meredith a civil infraction for failure to provide proof of payment, the deputy believed he had probable cause to arrest him for theft in the third degree. For that reason, the officers used the Mobile ID device to take Meredith's fingerprints while he was handcuffed.

One of the databases accessed through the device yielded the defendant's name of Zachery Meredith, his date of birth, and photograph. Sergeant Zelaya ran Meredith's information through a fourth database used by the Snohomish County Sheriff's office, which showed Meredith had two arrest warrants. Meredith was transported to jail.

Meredith was charged in Snohomish County with a gross misdemeanor for making a false or misleading material statement to a public servant. Meredith filed a pre-trial motion to suppress, arguing that he was unlawfully seized when he was contacted by Deputy Dalton and ordered off the bus because the deputy lacked reasonable suspicion that a crime had been committed. The district court denied the motion to suppress, and Meredith was convicted following a jury trial.

Meredith appealed his conviction to the Snohomish County Superior Court, which affirmed. The Court of Appeals granted Meredith's motion for discretionary review on the constitutionality of RCW 36.57A.235, relating to Deputy Dalton's initial

contact with Meredith requesting proof of fare payment or an ORCA card, which affirmed Meredith's conviction. The Court of Appeals assumed without deciding that Meredith had been seized but determined that Meredith had consented based on the contractual relationship that forms between the operator of a bus and a person choosing to ride it.

Meredith filed a petition for review with the Washington State Supreme Court (the Court).

Analysis of the Court

The Court only considered the very narrow, as applied challenge to the particular method of fare enforcement used in this case. Meredith contended that Deputy Dalton's actions were an unconstitutional disturbance of his right to privacy in violation of article I, section 7 of the Washington Constitution.

Article I, section 7 of the Washington Constitution protects against unwarranted government intrusions into private affairs. The seizure of a person by a police officer represents such an intrusion and must be supported by a warrant, subject only to narrow exceptions. Thus, the Court needed to determine whether a warrantless seizure had taken place and, if so, whether the action was justified by an exception to the warrant requirement.

Was Meredith seized?

The Court was split but held that Meredith was disturbed in his private affairs. Four justices believed that Meredith was seized when Deputy Dalton, while armed and wearing full uniform and while the bus moved, approached Meredith and demanded to see proof of payment. One justice believed that Meredith was seized when he was detained after being removed from the bus.

The Court was mindful that not every encounter between a police officer and a citizen is an intrusion requiring objective justification. It did not seek to impose wholly unrealistic restrictions upon a wide variety of legitimate law enforcement practices nor challenge the acknowledged need for police questioning as a tool in effective enforcement of the criminal laws. However, it noted, **"if a police officer's conduct or show of authority, objectively viewed, rises to the level of a seizure, then article I, section 7 requires lawful justification."**

The Court also noted that **a seizure occurs when, in view of all the circumstances surrounding the incident, a reasonable person would have believed that they were not free to leave, or free to otherwise decline an officer's request and terminate the encounter due to an officer's use of physical force or show of authority. This test is a purely objective one, looking to the actions of the law enforcement officer.**

The question, therefore, was whether Deputy Dalton's request for proof of payment was accompanied by a display of authority, such that a reasonable person would not have believed that they were free to decline the request. The Court noted that in this case the encounter occurred while Meredith was on a moving bus. When Deputy Dalton requested his proof of payment, passengers could not leave the bus because it was traveling between stops. Meredith could not get off between stops to avoid the encounter because the request to Meredith was made by Dalton shortly after Dalton boarded the bus and before the next stop. Meredith also had no reasonable opportunity to exit the bus to avoid speaking with the deputy during the brief period that the bus remained at the stop after the deputy boarded, as the Swift Blue Line only stop for about 10 seconds at each station.

Additionally, Deputy Dalton was not alone. His partner was working the same bus. Both were fully uniformed, and at least one of them was armed. The Court noted that the threatening presence of several officers further weighed in favor of holding that Meredith was seized.

The Court noted that **it had already recognized the coercive effect that a weapon can have in a police encounter, which is known to disproportionately affect Black, Indigenous, Latino, and Pacific Islanders based on the reasonable "fears of how an officer with a gun will react to them." Additionally, the Court considered the use of language or tone of voice indicating that compliance with the officer's request might be compelled.** Here, while the State emphasized that the deputy's tone of voice while speaking with Meredith was conversational, the Court considered the language Dalton used, in addition to his tone. Deputy Dalton said, "Proof of payment or ORCA card." The Court observed that there was no indication that this was phrased as a question. Rather, it was clear from the record that the deputy demanded information from Meredith to investigate whether he had paid his fare.

When Meredith could not provide the information, the encounter escalated to an arrest on outstanding warrants, made possible through the use of new law

enforcement resources. The Court opined that, **where law enforcement officers perform fare enforcement duties, such an escalation could happen to any innocent person who paid their fare but did not produce proof upon request.** An innocent person, recognizing that such an escalation could occur if they failed to comply with an officer's request, would reasonably feel compelled to comply.

The Court held that the totality of the circumstances showed that no reasonable person in Meredith's position would believe that they were free to decline the deputy's request for proof of fare payment. A majority of the Court held that Meredith was seized.

Did any exception to the warrant requirement authorize Meredith's warrantless seizure?

Here, the Court considered whether the disturbance of Meredith's private affairs was justified by statute. The applicable statute provides that, "designated persons have authority to request proof of payment from passengers." RCW 36.57A.235(2)(a). If proof is not provided, the statute authorizes the designated person to "request personal identification, issue a citation, and request that a passenger leave the bus or other mode of public transportation." RCW 36.57A.235(2)(b)(ii)–(iv).

Meredith did not argue that the statute was unconstitutional on its face. Rather, he brought an "as applied" challenge, arguing that article I, section 7 of the Washington Constitution cannot permit a fully armed law enforcement officer to disturb the private affairs of passengers on moving public transit vehicles without reasonable suspicion for the purposes of fare enforcement.

The Court noted that authority granted by a valid statute can provide the authority of law needed to support a disturbance of private affairs. However, interference with the broad right to privacy can be legally authorized by statute or common law only as far as reasonably necessary to further a substantial government interest that justifies the intrusion. Therefore, to determine the constitutionality of RCW 36.57A.235(2)(b), the Court needed to consider **(1) the scope of the disturbance that the statute authorizes, (2) the governmental interests underlying the statute, and (3) reasonableness, history, precedent, and common sense.**

The Court observed that Community Transit employs police officers to conduct fare enforcement. However, they often work with Swift ambassadors, civilians who request

proof of payment from the bus passengers and advise the police officers if there is any person that can't provide proof of payment. The officers confer with Community Transit fare ambassadors in determining how to handle such situations.

But on this particular occasion, Community Transit did not have any Swift ambassadors, so **the police officers worked as a team of two deputies riding the bus fully outfitted in their patrol uniforms.** Thus, **as applied to these circumstances, the statute purported to authorize Deputy Dalton (an armed, uniformed police officer) to disturb the private affairs of Meredith for the purposes of fare enforcement, despite having no reason to suspect Meredith had not paid. This created a situation in which a reasonable person in Meredith's position would have felt compelled to comply with the deputy's requests.**

The Court found that this disturbance of Meredith's private affairs was significantly greater than it would have been if unarmed, civilian Swift ambassadors were conducting fare enforcement on the bus.

Did the State show a substantial government interest in this particular method of fare enforcement, as opposed to fare enforcement generally?

The Court next considered whether there was a substantial governmental interest that justified the intrusion. The Court agreed that the government has a substantial interest in operating public transit, and that the transit authority has an interest in ensuring that fares are paid.

However, the applied challenge brought by Meredith did not depend on the government's general interest in fare enforcement. Rather, it depended on the government's specific interest in the particular method of fare enforcement used in this case. The State neither asserted nor explained why that specific interest was substantial.

The Court believed that the particular method of fare enforcement used in Meredith's case was not reasonably necessary to the government's general interest in fare enforcement. Meredith was asked for proof of payment by law enforcement officers, who then identified and arrested him using resources that no civilian conducting fare enforcement could have accessed.

Moreover, the risk of such an escalation would be acutely felt by reasonable transit passengers, who are more likely to be members of historically marginalized groups,

including Black, Indigenous, Latino, Pacific Islanders, and other people of color. Members of such groups are already known to be disproportionate victims of police encounters without reasonable suspicion. If allowed to continue, the Court reasoned, the high level of intrusion that occurred in this case would only exacerbate those disparities. The State did not show how such an outcome was reasonably necessary to further the governmental interest in fare enforcement on public transit.

The Court made two final observations. First, that the special needs doctrine did not apply to this case. As a matter of Fourth Amendment law, **the federal special needs doctrine provides that "in limited circumstances, where the privacy interests implicated by the search are minimal, and where an important governmental interest furthered by the intrusion would be placed in jeopardy by a requirement of individualized suspicion, a search may be reasonable despite the absence of such suspicion."** However, the Court noted that it had not created a general, special needs exception, and the State did not show that it should do so, in this case.

Second, the Court observed that Meredith did not consent to the method of fare enforcement used in this case merely by boarding the bus. The Court noted that the Supreme Court of Washington has never held that a person can consent to a seizure of their person. However, Meredith could have consented to the interaction with Deputy Dalton. The Court has set out three requirements for valid consensual interactions with police: 1) **the consent must be voluntary, 2) the consent must be granted by a party having authority to consent, and 3) the interaction must be limited to the scope of the consent granted.** The Court noted that Meredith had the authority to consent on his own behalf, so the only requirements to consider were whether Meredith did, in fact, consent, and if so, whether the encounter exceeded the scope of Meredith's consent.

The Court observed that Meredith may have impliedly consented to an interaction with a person conducting fare enforcement while on board the bus. However, this did not mean that Meredith consented to the particular method of fare enforcement used in this case. **The statute makes no mention of this possibility, nor was there any evidence of what the conspicuously posted signs related to fare enforcement actually said.** Without evidence that Meredith was informed that fare enforcement on the bus may involve questioning by law

enforcement officers, the State could not meet its burden of proving that Meredith voluntarily consented to such an interaction merely by boarding. Therefore, the Court did not need to reach the issue of whether the interaction between Meredith and Deputy Dalton exceeded the scope of Meredith's consent. No such consent was given, nor could it have been implied.

Thus, neither the federal special needs doctrine nor consent provided the authority of law necessary to justify the disturbance of Meredith's private affairs in this case. The majority held that Meredith was unlawfully seized. The resulting evidence was suppressed.

The Court made sure to note that in holding that Meredith was unlawfully seized, it did not announce a sweeping holding that contact with a police officer checking fares on a barrier-free bus amounts to an unconstitutional seizure. Only that, in this as-applied challenge, that this particular method of fare enforcement, as used in this case, disturbed Meredith's private affairs and lacked lawful justification based on the record presented.

The Court reversed the decision of the Court of Appeals and remanded for further proceedings.

Training Takeaway

The Washington State constitution protects its citizens against unwarranted governmental intrusions into their private affairs. The seizure of a person by police represents such an intrusion and must be supported by a warrant, subject to only a few narrow exceptions. The state constitution provides greater protection to individual privacy interests than does the Fourth Amendment of the United States Constitution.

That being said, not every encounter between a police officer and a citizen is an intrusion requiring an objective justification under the constitutional protection against unwarranted governmental intrusions into private affairs. If a police officer's conduct or show of authority, objectively viewed, rises to the level of a seizure, then the state constitution requires lawful justification.

A "seizure," as would require lawful justification, occurs only when, in view of all the circumstances surrounding the incident, a reasonable person would have believed they were not free to leave or free to otherwise decline the officer's request and terminate the encounter due to the officer's use of physical force or show of authority. The test for whether a seizure has occurred is a purely objective one, looking to the

actions of the law enforcement officer. In determining whether a defendant has been seized, courts should consider the use of language or tone of voice of the officer and whether it indicates that compliance with the officer's request might be compelled.

The Court noted that, as a matter of Fourth Amendment law, the "special needs doctrine" provides that in limited circumstances, where the privacy interests implicated by a search are minimal, and where an important governmental interest is furthered by the intrusion would be placed in jeopardy by a requirement of individualized suspicion, a search may be reasonable despite the absence of such suspicion. But even if the special needs doctrine applied to seizures, the State merely had a general need for fare enforcement, not a special need for this particular method of fare enforcement.

The Court also considered the question of consent to the police interaction. A statute may imply consent to warrantless intrusions in specific, limited circumstances. Whether consent to an interaction with police is voluntary is a question of fact and depends upon the totality of the circumstances.

In this case, Meredith did not, by the mere fact of boarding a bus, consent to an interaction with armed police officers, where there was no evidence that riders were informed that fare enforcement on the bus could involve questioning by law enforcement officers.

EXTERNAL LINK: View the Court Document

Law Enforcement Digest – March 2023

TOPICS

1. Searches and Seizures
2. Consent to search
3. Routine encounters
4. Prolonged traffic stop
5. Reasonable suspicion
6. Duty to protect
7. Creation of danger or risk
8. § 1983 liability of municipalities

CASES & REFERENCES

1. Sinclair v. City of Seattle 21-35975 (March 1, 2023
2. United States v. Taylor 21-10377 (March 1, 2023)
3. Washington v. Meredith 100135-5 (March 16, 2023)
   a. RCW 36.57A.235

WA Legal Updates

For further reading, the following training publications are authored by Washington State legal experts and available for additional caselaw review:

- Legal Update for WA Law Enforcement authored by retired Assistant Attorney General, John Wasberg
- **Caselaw Update** by WA Association of Prosecuting Attorneys [2018-2021] | [2022-present]