

**NOVEMBER 2019**  
**LAW ENFORCEMENT**  
**DIGEST**

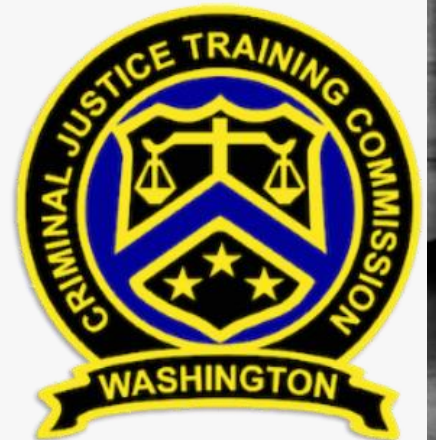


# LAW ENFORCEMENT ONLINE TRAINING DIGEST

Welcome to the November 2019 **Law Enforcement Digest Online Training!** This LED covers select court rulings issued in the month of August from the Washington State Supreme Court, the Washington Courts of Appeal, the United States Supreme Court, and the Ninth Circuit Court of Appeals. The cases are briefly summarized, with emphasis placed on how the rulings may affect Washington law enforcement officers or influence future investigations and charges.

Each cited case includes a hyperlinked title for those who wish to read the court's full opinion, as well as references to select RCWs. Links to additional Washington State prosecutor and law enforcement case law reviews and references are also included.

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



# **LAW ENFORCEMENT ONLINE TRAINING DIGEST**

NOVEMBER 2019 EDITION

Covering select case opinions issued in November 2019

- 1. SEARCH AND SEIZURE; CELL PHONE PING; EXIGENT CIRCUMSTANCES**
- 2. SEARCH WARRANTS; SEARCH AND SEIZURE**
- 3. POLICE BODY CAMERAS; PRIVACY ACT**
- 4. SEARCH AND SEIZURE; DIGITAL EVIDENCE**
- 5. PROBATION SEARCH; SEARCH AND SEIZURE; COMMUNITY CUSTODY**
- 6. U & T VISA CERTIFICATION TRAINING MANUAL FOR LAW ENFORCEMENT**
- 7. 2020 ANNUAL CIT TRAINING COURSE – DELAYED RELEASE DATE**
- 8. ADDITIONAL RESOURCE LINKS: Legal Update for Law Enforcement (WASPC, John Wasberg) & Prosecutor Caselaw Update (WAPA, Pam Loginsky)**



# 1

## CELL PHONE PING; EXIGENT CIRCUMSTANCES; SEARCH AND SEIZURE

### State v. Muhammad

No. 96090-9 (Nov. 7, 2019)

WASHINGTON STATE SUPREME COURT

#### FACTS:

A couple on a walk discovered the lifeless and badly brutalized naked body of a woman in her 60s that had been discarded on the side of the road. Law enforcement's public plea for anyone who could identify the body led a man to contact officers with his suspicion that the body was that of his friend. He told officers that he ran into his friend at the grocery store the night prior to the discovery of the body. She had requested a ride, but he was on a bicycle, so he wasn't able to assist her. Officers then reviewed security footage from the surrounding businesses to put together a timeline of the woman's movements that night.

Video footage showed a distinctive car parked in the nearby McDonald's parking lot, and the victim walking in that direction until she was no longer visible, and the recording stopped. No one was seen entering or exiting the car. The video triggered recording again when the car's headlights activated, and it drove through the parking lot 7 minutes later. A nearby surveillance video captured the same car traveling by with 2 people inside.



# 1

## CELL PHONE PING; EXIGENT CIRCUMSTANCES; SEARCH AND SEIZURE

### State v. Muhammad

No. 96090-9 (Nov. 7, 2019)

WASHINGTON STATE SUPREME COURT

#### **FACTS, cont.:**

The distinctive car was then spotted driving through a nearby hotel parking lot, stopping by a secluded back entrance. Officers later located a condom wrapper in this location. The car was seen leaving that location about an hour later. The victim was not seen alive again.

Three days later, an officer spotted the distinctive car seen in the videos. He noted the license plate, and stopped the car to identify the driver and registered owner of the car. The defendant was both the RO and the driver. During the traffic stop, the officer told the defendant of a crime that occurred in the Albertson's parking lot, and a car matching his being seen there. The defendant denied having been in the lot, and told the officer that he believed he went straight home after finishing work at the Quality Inn. He asked what kind of crime, but the record does not indicate that the officer told him the nature of the crime. The officer got the defendant's cell phone number, and concluded the contact by thanking him for his time and apologizing for any inconvenience.

# 1

## CELL PHONE PING; EXIGENT CIRCUMSTANCES; SEARCH AND SEIZURE

### State v. Muhammad

No. 96090-9 (Nov. 7, 2019)

WASHINGTON STATE SUPREME COURT

#### **FACTS, cont.:**

The officer then told the rest of his department that he had located the distinctive car in the videos. His sergeant determined that the driver was a registered sex offender, and had a prior conviction in Arkansas for rape. Using this information, officers obtained a search warrant to search the defendant's car. While processing the warrant request, the officer surveilled the defendant and his vehicle, watching him take a woman, later determined to be his wife, to the store and then return to his apartment. The surveillance was broken for a reason not explained in the court's opinion, and when the officer returned to the apartment, the car was no longer there.

In response, the police "pinged" the defendant's cell phone without a warrant and located his car in an orchard in Lewiston, Idaho. Washington and Idaho police then seized the defendant's cell phone and impounded his car.

The defendant repeatedly changed his story about his whereabouts on the night of the murder, all contradicted by video surveillance evidence, physical evidence including DNA, and witness statements.

# 1

## CELL PHONE PING; EXIGENT CIRCUMSTANCES; SEARCH AND SEIZURE

### State v. Muhammad

No. 96090-9 (Nov. 7, 2019)

WASHINGTON STATE SUPREME COURT

#### **FACTS, cont.:**

Police obtained a search warrant for the defendant's cell phone records which showed multiple calls to the defendant's wife on the night of the murder. These calls connected to multiple cell towers, indicating that the defendant was moving. One of the "pings" placed the defendant in the location where the victim's body was located.

The defendant was arrested and charged with Murder and Rape. He moved to suppress all physical evidence collected as a result of the warrantless ping of his cell phone. The motion was denied based in part on a finding that exigent circumstances justified the warrantless search. He was convicted of both charges, and then appealed to the Court of Appeals, which affirmed the validity of the initial *Terry* stop and upheld the warrantless ping as a valid exercise of the exigent circumstances exception ([July 2018 LED](#)), but declined to rule on its constitutionality.

The defendant now appeals to the Supreme Court to rule on his constitutionality argument, claims exigent circumstances didn't justify the ping, and claims his sentencing for both Felony Murder and Rape violated Double Jeopardy. *(The sentencing issue isn't discussed here, but 5 of the justices held the two crimes violate Double Jeopardy and the convictions were sent back for resentencing.)*

# 1

## CELL PHONE PING; EXIGENT CIRCUMSTANCES; SEARCH AND SEIZURE

### State v. Muhammad

No. 96090-9 (Nov. 7, 2019)

WASHINGTON STATE SUPREME COURT

#### TRAINING TAKEAWAY – Warrantless Ping of Suspect’s Cell Phone, Constitutionality:

The “ping” of a cell phone to gather Cell Site Location Information (“CSLI”) is a search of an individual’s “private affairs” under both the 4<sup>th</sup> Amendment and Article 1, Section 7 of the WA Constitution, and cannot be collected without a warrant or a valid exception to the warrant requirement.

- CSLI is highly private information, tapping into a cell phone’s ability to operate as a 24-hour surveillance tool, collecting and transmitting information about the location of the phone and its user. (Carpenter v. US – which weighed admissibility of *historical* CSLI rather than the *real time* CSLI in the present case)
- Similar to a GPS device (Jackson) or thermal imaging surveillance (Young), a cell phone ping provides a “**technological substitute for traditional visual tracking.**”



# 1

## CELL PHONE PING; EXIGENT CIRCUMSTANCES; SEARCH AND SEIZURE

### State v. Muhammad

No. 96090-9 (Nov. 7, 2019)

WASHINGTON STATE SUPREME COURT

#### **TRAINING TAKEAWAY – Exigency Justified the Warrantless Ping:**

The warrantless “ping” search of the suspect’s cell phone to determine its location via real time CSLI data was justified by the exigent circumstances exception to the warrant requirement where police feared the flight of the suspect or the destruction of evidence critical in the investigation of a violent crime, and knew their previous contact with the suspect had tipped him off to law enforcement suspecting a tie between his vehicle and a crime.

# 1

## CELL PHONE PING; EXIGENT CIRCUMSTANCES; SEARCH AND SEIZURE

### State v. Muhammad

No. 96090-9 (Nov. 7, 2019)

WASHINGTON STATE SUPREME COURT

#### TRAINING TAKEAWAY – Exigency Justification for Warrantless Ping:

The court uses a totality of the circumstances standard to determine whether a warrantless search is justified by exigency.

- Officers must provide specific, articulable facts and reasonable inferences from which the warrantless intrusion may be justified.
- The court will consider:
  - (1) The gravity or violent nature of the offense with which the suspect is to be charged,
  - (2) Whether the suspect is reasonably believed to be armed,
  - (3) Whether there is reasonably trustworthy information that the suspect is guilty,
  - (4) There is strong reason to believe that the suspect is on the premises,
  - (5) A likelihood that the suspect will escape if not swiftly apprehended, and
  - (6) The entry is made peaceably.
- The mere suspicion of flight or destruction of evidence won't satisfy this requirement.
- Not every factor has to be present, but the totality of the circumstances must clearly justify the need to act quickly.

# 1

## CELL PHONE PING; EXIGENT CIRCUMSTANCES; SEARCH AND SEIZURE

### State v. Muhammad

No. 96090-9 (Nov. 7, 2019)

WASHINGTON STATE SUPREME COURT

#### **TRAINING TAKEAWAY – Totality of the Circumstances:**

**It was reasonable for officers to infer that the defendant knew he was a suspect and had fled the area, creating exigent circumstances supporting their need to act quickly, when they lost contact with him shortly after he learned the police were focusing their investigation on a car similar to his and only after police discontinued surveillance; there was trustworthy information that the suspect was guilty of a violent crime (surveillance video, known to victim, false statements to officer that contradicted video evidence); and he was in close proximity to the crime.**

# 1

## CELL PHONE PING; EXIGENT CIRCUMSTANCES; SEARCH AND SEIZURE

### State v. Muhammad

No. 96090-9 (Nov. 7, 2019)

WASHINGTON STATE SUPREME COURT

#### **TRAINING TAKEAWAY – Exigent Circumstances:**

#### **REMINDER - Law enforcement cannot purposefully create its own exigency to then use to justify a warrantless search.**

- If the evidence had suggested the officers purposefully asked the defendant about his vehicle in an attempt to get him to flee the area, his subsequent flight wouldn't have been considered as a potential justification for exigency and the warrantless search.
- The court noted that the officers applied for a search warrant for the car based in part on evidence collected during the contact in which they asked the defendant about his car, so it wouldn't have made sense for them to have asked about it in some attempt to get him to flee (and therefore make serving their search warrant difficult).

# 2 SEARCH WARRANTS; SEARCH AND SEIZURE

## State v. Hatt

COA No. 77117-5-I (November 18, 2019)  
Court of Appeals, Division I

### **FACTS:**

On the night of his murder, the victim drove to the defendant's property with a female friend in his car. He had previously been involved in an alleged burglary of the defendant's home, but according to testimony, the two men had discussed this issue and allegedly resolved their differences. Multiple witnesses testified as to previous ongoing threats between the two men, and the victim's reputation for being armed and prone to retaliation and violence.

After a brief discussion on the road outside the house with one of the property's residents (who then called to the defendant to let him know the victim was on his way), the victim continued onto the defendant's property. He contacted another resident who thought was attempting to shake his hand. Instead, the victim punched the man in the face, and then continued punching and kicking him repeatedly once he was down. The defendant could see this happening from the upstairs window of the house, and then by broadcasting the security camera footage onto his TV. The defendant retrieved a gun from his safe and proceeded down the outside stairs to where the victim was assaulting the other male.

The defendant testified that he thought the victim had a gun in his hand. This later turned out to be a 4-6" long metal bar. The defendant fired one shot into the air, and the second shot in the direction of the victim after he testified that he believed the victim was raising his left hand (which he thought had a gun) in his direction. The second bullet hit the victim in the forehead killing him.



# 2 SEARCH WARRANTS; SEARCH AND SEIZURE

## State v. Hatt

COA No. 77117-5-I (November 18, 2019)  
Court of Appeals, Division I

### **FACTS, cont.:**

After killing the victim, the defendant spoke to the female friend who had accompanied the victim to the property, and then had his girlfriend and another resident drive her home after telling her not to tell anyone about the crime. The defendant dug a hole near the firepit and had the resident who had been attacked to help him drag the victim's body to the pit. They buried the body, covered it in acid, and lit the firepit.

The man who had been assaulted by the victim ultimately went to police to confess what had happened. Detectives secured a search warrant for the property. They found what they believed might be skin and dark hair in the firepit, and then found what appeared to be a rib bone. The Medical Examiner's office was called in to exhume the victim's body from the fire pit.

At trial, the defendant proposed a jury instruction on justifiable self-defense homicide, which the trial court allowed, but it also instructed the jury that self-defense isn't available if the defendant's own actions provoked or commenced the confrontation with the victim. The jury convicted the defendant.

The defendant claimed he killed the victim in self-defense and defense of others. A jury convicted him of 1<sup>st</sup> Degree Murder, Unlawful Possession of a Firearm in the 2<sup>nd</sup> Degree, and Evidence Tampering. He now appeals his convictions on multiple grounds. This training focuses on the legal issues related to the search warrant for the defendant's property and the evidence gathered pursuant to the warrant.

# 2 SEARCH WARRANTS; SEARCH AND SEIZURE

## State v. Hatt

COA No. 77117-5-I (November 18, 2019)  
Court of Appeals, Division I

### **TRAINING TAKEAWAY: Search Warrant Particularity - Place**

**The search warrant for the defendant's property was sufficiently particular as to location and included the firepit where it provided the correct street address of the .083-acre property which the executing officers were able to identify, and described the property as containing "a single family residence and numerous detached sheds, outbuildings and various operable and apparently inoperable recreation vehicles or like items used by 'squatters.'"**

- A warrant for the search of real property authorizes a search of parts of the property.
- The fire pit was an "item" that was part of the property, and did not need to be separately designated.

# 2 SEARCH WARRANTS; SEARCH AND SEIZURE

## State v. Hatt

COA No. 77117-5-I (November 18, 2019)  
Court of Appeals, Division I

### **TRAINING TAKEAWAY: Search Warrant Scope, Digging in the Fire Pit**

**Moving and sifting through dirt and debris in the fire pit was a permissible method of search where no specific method of searching the property was dictated in the affidavit or warrant.**

- Officers were authorized to seize “[d]igging equipment or other tools which could be used to disturb soil, excavate soil, or disrupt soil or vegetation,” and to search any locked or sealed items that required damaging to access the contents.
- The court held that common-sense dictates that officers executing the warrant would understand that they should be paying particular attention to any areas of the property that appeared to have been dug into.
- Although the fire pit wasn’t locked or sealed, the disruption of the dirt and debris during its search is analogous to damaging an item to access evidence inside.

# 2 SEARCH WARRANTS; SEARCH AND SEIZURE

## State v. Hatt

COA No. 77117-5-I (November 18, 2019)  
Court of Appeals, Division I

### **TRAINING TAKEAWAY: Search Warrant Particularity - Items to Be Seized**

**A search warrant is sufficiently particular to authorize the seizure of an intact, or mostly intact, body when it relays witness statements that the body had allegedly been doused with chemicals and burned for 2 to 3 days; the detective saw signs of a recent fire but no body; and the warrant authorizes the seizure of trace evidence of biological material including blood, skin, fingerprints, tissue or other biological material.**

- It would be reasonable based on these facts to assume that trace evidence would be all that was left of the body.
- The warrant provided the officers executing the warrant with sufficient guidance to identify the material to be seized with reasonable certainty.

**Officers operating under a valid search warrant for a premises have the right to seize any contraband which they discover while conducting a search within the scope of the warrant.**

**(Burleson)**

# 2 SEARCH WARRANTS; SEARCH AND SEIZURE

## State v. Hatt

COA No. 77117-5-I (November 18, 2019)  
Court of Appeals, Division I

### **TRAINING TAKEAWAY: Search Warrant Missing Subsections of Statutes**

**The search warrant was not overbroad where although it didn't specify the specific subsections of the criminal statutes, it was clear from the affidavit and evidence which crimes were under investigation.**



# 3 POLICE BODY CAMERAS; PRIVACY ACT

## State v. Clayton

COA No. 35884-4-III (November 19, 2019)  
Court of Appeals, Division III

### **FACTS:**

Officers were at the defendant's home following a report of shots being fired. He allowed the officers to enter and consented to a search of his home. There were six other residents in the home. Three of the officers present had active body cameras which was not made known to the defendant or the other residents. The body cameras were filming throughout the investigation.

The defendant was charged with Unlawful Possession of a Firearm stemming from two revolvers located in his home during the search. At trial the defense unsuccessfully objected to the introduction of footage from one of the officer's body cameras that showed the discovery of the firearms and the defendant's arrest. He appeals his conviction claiming that the evidence should have been suppressed as protected private conversation under the Privacy Act, RCW 9.73.

# 3 POLICE BODY CAMERAS; PRIVACY ACT

## State v. Clayton

COA No. 35884-4-III (November 19, 2019)  
Court of Appeals, Division III

### TRAINING TAKEAWAY:

**Recorded evidence from an officer's body camera isn't protected by the Privacy Act, RCW 9.73.090 because the conversation between police and a suspect of a crime is not a private conversation where the police were exercising their official duties, there were multiple third parties present, and the suspect had no subjective expectation that the conversation was private when he knew the officers were present to investigate a possible crime.**

The fact that the conversation and recording occurred in a protected space – the suspect's home – doesn't automatically transform the otherwise public conversation to a private conversation.

# 3 POLICE BODY CAMERAS; PRIVACY ACT

## State v. Clayton

COA No. 35884-4-III (November 19, 2019)  
Court of Appeals, Division III

### **TRAINING TAKEAWAY: When is a Conversation Private?**

**A conversation is “private” and therefore protected by RCW 9.73, the Privacy Act, if the parties have a subjective expectation that the conversation is private, and that expectation is objectively reasonable.**

**The court will consider the subject matter of the conversation, the location, the potential presence of third parties, and the roles of the participants.**

- The presence of another person during the conversation generally means that the matter is not secret or confidential.
- Conversations with uniformed, on-duty law enforcement officers are typically not private conversations as people generally understand that information they provide to officers conducting an investigation will turn up in police reports or be reported in court.

# 3 POLICE BODY CAMERAS; PRIVACY ACT

## State v. Clayton

COA No. 35884-4-III (November 19, 2019)  
Court of Appeals, Division III

### **TRAINING TAKEAWAY: Common Scenarios NOT Protected as Private Conversation:**

- The conversations of officers performing their official function in the presence of a third person are not private conversations and are not protected under the Privacy Act. ([Flora](#))
- Conversations recorded by police between would-be drug sellers and strangers passing by on the street are not protected under the Privacy Act. ([Clark](#))
- Car-mounted camera recordings are not private. ([Lewis v. Dept of Licensing](#))
- Officers' pre-trial interviews with defense attorney are a regular part of performing their official duties and are not private. ([Mankin](#))

# 3 POLICE BODY CAMERAS; PRIVACY ACT

## State v. Clayton

COA No. 35884-4-III (November 19, 2019)  
Court of Appeals, Division III

### **TRAINING TAKEAWAY: Post-Arrest Privacy Act Protections**

**The protections of the [Privacy Act](#) attach once a suspect is placed under arrest.**

- RCW 9.73.090(1)(b) permits law enforcement to record an arrested person, for a valid police or court use, upon (1) informing them that a recording is being made, (2) stating the time of the beginning and end of the recording in the recording, and (3) advising the person of their constitutional rights at the commencement of the recording.
- RCW 9.73.090(1)(c) permits car-mounted camera recordings if, absent exigent circumstances, the person is told they are being recorded. There is no requirement that the person consent to the recording.



# 4 SEARCH AND SEIZURE; DIGITAL EVIDENCE

## United States v. Norris

No. 17-10354 (9th Cir. Nov. 4, 2019)  
Ninth Circuit Court of Appeals

### **FACTS:**

During the course of an investigation into the possession and distribution of child pornography through a peer-to-peer file-sharing network, an FBI agent downloaded illegal images from username “boysforboys1” that was using a Comcast IP address. Comcast couldn’t determine the physical address for the user. Several months later, the same user logged into the same peer-to-peer-file-sharing network from a different IP address. AT&T identified the subscriber associated with the IP address as residing in Apartment 242.

After conducting a public records search and confirming with the apartment manager that the subscriber still resided at Apartment 242, the agent obtained a search warrant for the apartment. In executing the search warrant, the agent determined that the residents of Apartment 242 had not uploaded the illegal materials. He did, however, confirm that two unknown devices had been connected to the wireless router in Apartment 242 without authorization.

# 4 SEARCH AND SEIZURE; DIGITAL EVIDENCE

## United States v. Norris

No. 17-10354 (9th Cir. Nov. 4, 2019)  
Ninth Circuit Court of Appeals

### **FACTS, CONT.:**

The agent then input the MAC addresses of the two unknown devices (as determined from the Apartment 242 router) into Mocherhunter – an open-source wireless tracking software program designed to identify computers trespassing on wireless computer networks. Mocherhunter enables the detection of wireless traffic without directly accessing any device. The agents used the program to take readings around the apartment building, and were able to track the signal strength of the unknown devices to the apartment next door – Apartment 243. The agents used that information to obtain a search warrant for Apartment 243 which yielded evidence of illegal pornographic material.

The resident of Apartment 243 was charged with distributing and possessing material involving the sexual exploitation of minors. He moved to suppress the evidence gained from the Mocherhunter software as an unlawful warrantless search under the 4<sup>th</sup> Amendment, and claimed the search warrant was void due to material misrepresentations and/or omissions. The court denied the motions, and the defendant was convicted. He now appeals.

# 4 SEARCH AND SEIZURE; DIGITAL EVIDENCE

## United States v. Norris

No. 17-10354 (9th Cir. Nov. 4, 2019)  
Ninth Circuit Court of Appeals

### TRAINING TAKEAWAY:

Detecting the signal strength of a device's media-access-control (MAC) address with wireless tracking software is not a 4<sup>th</sup> Amendment protected search because there was no physical intrusion into the defendant's residence, and the defendant had no subjective expectation of privacy in the signal strength of his MAC address emanating from his unauthorized use of a third-party's password protected wireless router.

- **The 4th Amendment protects the privacy of persons, not places, so a search can occur either (1) where there is a physical intrusion or (2) a person has a subjective expectation of privacy and that expectation is one that society is prepared to deem reasonable.**

# 4 SEARCH AND SEIZURE; DIGITAL EVIDENCE

## United States v. Norris

No. 17-10354 (9th Cir. Nov. 4, 2019)  
Ninth Circuit Court of Appeals

### TRAINING TAKEAWAY: Physical Intrusion

#### 1. There was no physical intrusion into the defendant's residence.

- The software program, Moocherhunter, was installed on a laptop computer and connected to a directional antenna.
- With the software in passive mode, the federal agents captured signal strength readings in the apartment building by walking around the building with the laptop.
- The software indicated that the digital signal was strongest when they were closest to Apartment 243.
- The agents made no physical intrusion into the defendant's apartment or curtilage while gathering this evidence.

# 4 SEARCH AND SEIZURE; DIGITAL EVIDENCE

## United States v. Norris

No. 17-10354 (9th Cir. Nov. 4, 2019)  
Ninth Circuit Court of Appeals

### TRAINING TAKEAWAY: Subjective Expectation of Privacy

2. The defendant had no subjective expectation of privacy in the signal strength of his device's MAC address when he was connecting it without authorization to a third party's router. Even if he expected that to remain private, such an expectation would not be recognized as reasonable by society.
  - The device's MAC address signal was noted to "**reach outside**" a home to connect to the router, and similar to loud music, is therefore openly perceptible to third parties.
  - The court distinguished it from a prior ruling that thermal-image scanning of a house was a search on this notion that the defendant's activities in that case were confined to the physical limits of the home, whereas connecting to the Internet was not. ([Kyllo v. United States](#))

# 5

## SEARCH AND SEIZURE; COMMUNITY CUSTODY

### United States v. Ped

No. 18-50179 (November 15, 2019)  
Ninth Circuit Court of Appeals

#### **FACTS:**

In April 2016, the defendant's brother (Wilson) was released on community supervision and subject to a search of his residence and any property under his control without a warrant, day or night. Wilson informed his probation officer that he lived at his family's home on Eliot Street in Santa Paula, CA with his brother (Ped - the defendant in this case) and their mother. During a subsequent warrantless search of the home, the officers spoke with the mother and confirmed that both of her sons lived in the home. Officers later responded to the home in response to a family disturbance call where they met both brothers and the mom, and confirmed that all of them lived at the house.

In June 2016, Wilson's probation officer provided the Santa Paula Police Department with a list of names and addresses of persons living in the city who were subject to supervision. The list included Wilson and the Eliot Street address. The next day Wilson was arrested on new charges and held in jail for 3 months. Upon his release he told the probation officer that he would be living in Newbury Park, CA. The probation officer didn't independently verify the new address, nor did he update the list he'd previously provided to the Santa Paula Police.

# 5

## SEARCH AND SEIZURE; COMMUNITY CUSTODY

### United States v. Ped

No. 18-50179 (November 15, 2019)  
Ninth Circuit Court of Appeals

#### **FACTS, CONT.:**

Ten days after Wilson's release, officers from the Santa Paula Police Department randomly selected Wilson for a routine search of individuals on supervised release. Not knowing about his move to Newbury Park, the officers went to the Eliot Street address. As they approached the house, officers heard a commotion inside. They pushed open the door and saw the defendant, Ped, holding a methamphetamine pipe. Both Ped and the mother told the officers that Wilson no longer lived there, but the officers disbelieved them and searched the residence anyway. That search turned up seven firearms which the defendant admitted were his. The defendant plead guilty to one count Felon in Possession of a Firearm. He appeals the trial court's denial of his motion to suppress the firearm found during the warrantless search of his home.

# 5

## SEARCH AND SEIZURE; COMMUNITY CUSTODY

### United States v. Ped

No. 18-50179 (November 15, 2019)  
Ninth Circuit Court of Appeals

#### TRAINING TAKEAWAY:

**Where a probation officer provided the local police a list of names and addresses of probationers under active supervision that included the defendant's brother and their shared address, the officers had probable cause to reasonably believe that the defendant's brother still lived at the address three months later where there was no indication that the address had been transitory, and where they'd corroborated the brother's actual residence there on multiple recent occasions.**



# 5

## SEARCH AND SEIZURE; COMMUNITY CUSTODY

### United States v. Ped

No. 18-50179 (November 15, 2019)  
Ninth Circuit Court of Appeals

#### TRAINING TAKEAWAY: Probable Cause as to a Parolee's Residence

Probable cause as to residence exists if an officer of “reasonable caution” would believe, based on the totality of the circumstances known to the officers at the time of the search, that the parolee lives at a particular residence. ([United State v. Grandberry](#))

Staleness of information establishing probable cause must be evaluated in light of the particular facts of the case. ([United State v. Pitts](#))

- The statements by the defendant and the mother that the brother no longer lived in the house did not constitute convincing evidence that undermined the information the officer had previously received from the probation officer and corroborated through their own contacts.
- The fact that the brother had informed his probation officer of his new address days before the search of the house isn't relevant because the assessment of probable cause takes into account the totality of the circumstances “known to the officers at the time of the search,” and the officers had not been told of the change.

# 5

## SEARCH AND SEIZURE; COMMUNITY CUSTODY

### United States v. Ped

No. 18-50179 (November 15, 2019)  
Ninth Circuit Court of Appeals

#### PRACTICE POINTERS:

When possible, you can save potential frustration or worse by simply making an attempt to conduct additional inquiries to confirm the residence of a probationer before engaging in a warrantless search.

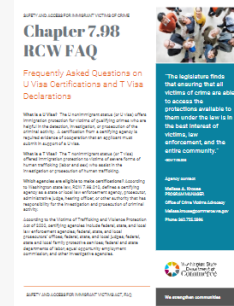
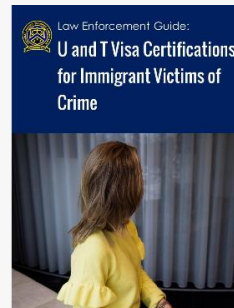
That said, where you have reasonable and reliable information to believe the probationer resides at the address, you aren't obligated to simply believe another resident's unsubstantiated denial.

NOTE: The court has previously REQUIRED further inquiries before conducting the search of a residence that was not previously reported by the parolee.

# LAW ENFORCEMENT TRAINING RESOURCES ON U & T VISA CERTIFICATION

A [training manual](#) written to guide law enforcement and other certifying agencies through compliance with [RCW 7.98.020](#) – Safety and Access for Immigrant Victims of Crime and the U & T Visa Certification Process is now posted on the Department of Commerce’s website.

The website also has an [FAQ](#) document and [victim resource documents](#) that can be posted on your website or provided via physical copy in your agency’s community resources area to satisfy the public outreach requirement of RCW 7.98.020.



## [U & T Visa Certification Manual for Law Enforcement](#)

## [FAQS – U & T Visa Certification for Law Enforcement](#)



## CIT 2019 ANNOUNCEMENT

### DELAYED RELEASE - Annual Crisis Intervention Team Training (2020)

To ensure a quality training experience and to prevent functionality issues that have caused frustration for Stakeholders during the previous years' launches, the **Annual Crisis Intervention Team Training (2020) online course** will NOT be assigned or available on January 3, 2020 as previously announced and **is delayed until February 7, 2020** starting at 0900.

While we continue to program and test the online course, please note the following:

- 1) **No one will be out of compliance during this delay.**
- 2) Everyone will have until 12/31/2020 to complete the CIT 2020 online training.
- 3) When the course is assigned, each officer will receive an email from the WSCJTC Acadis Portal that notifies them of the assignment.
- 4) If an officer has never taken an online course in the WSCJTC Acadis Portal, their account is not active. They will receive two emails (Welcome Email and Assignment Email) when the course is assigned to them.

If you have questions or need help, please contact:

- Policy/Mandate/RCW Questions – Bob Graham at [bgraham@cjtc.wa.gov](mailto:bgraham@cjtc.wa.gov) or [cit@cjtc.wa.gov](mailto:cit@cjtc.wa.gov)
- Annual 24 Hour In-Service Audit Questions – Kayla Wold at [kwold@cjtc.wa.gov](mailto:kwold@cjtc.wa.gov)
- Technical Questions about the Portal – WSCJTC Acadis Portal Help Desk at [lms@cjtc.wa.gov](mailto:lms@cjtc.wa.gov)

# 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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Program

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