

OCTOBER 2018
LAW ENFORCEMENT
DIGEST



LAW ENFORCEMENT ONLINE TRAINING DIGEST



Welcome to the new **Law Enforcement Digest Online Training!** This refreshed edition of the LED continues the transition to an online training resource created with the Washington law enforcement officer in mind. Select court rulings from the previous month are summarized briefly, arranged by topic, with emphasis placed on the practical application of legal changes to law enforcement practices.

Each cited case includes a hyperlinked title for those who wish to read the court's full opinion. Links have also been provided to additional Washington State prosecutor and law enforcement case law reviews and references.

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

LAW ENFORCEMENT ONLINE TRAINING DIGEST

OCTOBER 2018 Edition

Covering Select Cases Issued in August & September 2018

1. **FELONY MURDER; ROBBERY**
2. **MURDER; DOMESTIC VIOLENCE; ONGOING PATTERN OF ABUSE**
3. **FOREIGN PROTECTION ORDERS; DOMESTIC VIOLENCE**
4. **MISDEMEANOR PRESENCE; FELLOW OFFICER RULE; WARRANTLESS ARREST**
5. **CRIME OF ARREST; UNLAWFUL RETENTION OF FOOD STAMPS**
6. **CIT Training Reminder – December 31st Deadline**
7. **Additional Resource Links:** Legal Update for Law Enforcement (WASPC, John Wasberg) & Prosecutor Caselaw Update (WAPA, Pam Loginsky)



1 FELONY MURDER; ROBBERY

FELONY MURDER; ROBBERY
State v. Wang, COA No. 76369-5-I (Aug. 27, 2018)
Court of Appeals, Division I

FACTS:

Victim was found stabbed to death in her ransacked apartment when fire fighters responded to a fire alarm. It was believed she worked as a prostitute. The defendant had contacted the victim to arrange her services via an internet calling application account he had created that day. The defendant was seen on surveillance video walking toward the apartment from the garage, getting off the elevator on the victim's floor after she had just buzzed someone in to the front door, and then, around the time of the murder, leaving the victim's apartment carrying a full bag. The next day the defendant attempted to sell an expensive handbag. At the time, the defendant was in significant financial distress, and had been looking for a way to make "fast money" to repay his debts.

Based on this evidence, the defendant was convicted of 1st Degree Felony Murder (based on the robbery), 1st Degree Arson, and 2nd Degree Intentional Murder. The defendant now appeals his convictions.

1 FELONY MURDER; ROBBERY

FELONY MURDER; ROBBERY

State v. Wang, COA No. 76369-5-I (Aug. 27, 2018)

Court of Appeals, Division I

TRAINING TAKEAWAY:

The State offered sufficient evidence that the defendant entered the victim's apartment with the intent to rob her. Her murder was committed in furtherance of that robbery, and therefore satisfies the requirements of felony murder.

[NOTE: In an appeal where the defendant files against the State, the court examines the evidence from the standpoint most favorable to the State.]

In addition to the plain facts of the crime, there was law enforcement testimony that due to the nature of their work, escorts often have large sums of cash on their person, and are reluctant to report crimes committed against them. This supported the State's claim that the defendant specifically targeted the victim to rob her to get the "fast cash" he needed, and therefore her murder was in furtherance of the robbery.

1 FELONY MURDER; ROBBERY

FELONY MURDER; ROBBERY
State v. Wang, COA No. 76369-5-I (Aug. 27, 2018)
Court of Appeals, Division I

TRAINING TAKEAWAY:

There must be an “intimate connection” between the killing and the BARK felony (Burglary, Arson, Robbery, and Kidnapping) to establish felony murder.

The killing must have occurred:

1. In the course of the felony,
2. In furtherance of the felony, or
3. While in immediate flight from the felony

1 FELONY MURDER; ROBBERY

FELONY MURDER; ROBBERY
State v. Wang, COA No. 76369-5-I (Aug. 27, 2018)
Court of Appeals, Division I

TRAINING TAKEAWAY:

Felony murder generally requires that the *supporting BARK felony precedes the killing*, with the victim's death a probable consequence of the felony. However, the court notes that this sequence of the crimes isn't always required:

- A killing may be done in order to facilitate a robbery, making the killing “in the furtherance” of the robbery.
- The killing itself is the force used to obtain or retain the property, and the death is the probable consequence of the crime.

The BARK felony sequence can be met where the **INTENT** to commit the underlying crime is formed prior to the killing.

- Here, the defendant went to the victim's apartment with the intent to rob her, starting the process of the felony's commission before her killing.

2 MURDER; DV; ONGOING PATTERN OF ABUSE

1st DEGREE MURDER; DOMESTIC VIOLENCE;
ONGOING PATTERN OF ABUSE

State v. Brush, COA No. 49760-3-II (Aug. 28, 2018)
Court of Appeals, Division II

FACTS:

On July 25th, D and V get into a fight. D throws a wine bottle against the wall, throws the V's property out of the house, and damages her car with a hammer. V is arrested because D claims she was the primary aggressor. D recants next day, and V and her daughter move out of the house.

Over the next month and a half period between the victim's false arrest and her murder, the D engages in various behaviors designed to intimidate and stalk her. Two male friends testified to the D watching the V from his truck on at least 4 occasions, and that the V became terrified when this occurred. Following one occurrence, the V agreed to meet and speak with the D. When she returned to the house where her friend was waiting, the D came knocking on the door. He testified V was scared, and instructed him to not answer the door. Later that same day, the defendant followed the V and her daughter in his truck as they walked along a road.

2 MURDER; DV; ONGOING PATTERN OF ABUSE

1st DEGREE MURDER; DOMESTIC VIOLENCE;
ONGOING PATTERN OF ABUSE

State v. Brush, COA No. 49760-3-II (Aug. 28, 2018)
Court of Appeals, Division II

FACTS, cont.:

The daughter reported that the truck accelerated toward them, forcing them to run to a nearby parking lot to hide. She said her mother was scared and crying, and ultimately vomited as a result. When they returned home, the D had left voicemails threatening to post naked pictures of the V at her workplace and turn her in for unemployment and tax fraud. The D also filed a second false report with police claiming that the V had assaulted him.

On September 11th, the V agreed to meet in person at a park to discuss a financial issue. Once there, the V and D began to argue. D retrieved a shotgun from his nearby truck, shooting the V four times from a short range, including a final shot to her head from a distance of 3 or 4 feet.

D was convicted at trial of 1st Degree Murder, with the jury finding multiple aggravating sentencing factors, including that it was a domestic violence crime committed as part of an ongoing pattern of psychological abuse over a prolonged period of time.

2 MURDER; DV; ONGOING PATTERN OF ABUSE

1st DEGREE MURDER; DOMESTIC VIOLENCE;
ONGOING PATTERN OF ABUSE

[State v. Brush](#), COA No. 49760-3-II (Aug. 28, 2018)
Court of Appeals, Division II

TRAINING TAKEAWAY:

A seven week period of multiple instances of following, stalking, intimidating, harassing with false accusations of criminal behavior, contacting, and ultimately murdering his ex-girlfriend is sufficient duration to prove an exceptional sentence aggravator as Domestic Violence - Ongoing Pattern of Abuse.

Previous Washington cases have held that 2 weeks isn't a "prolonged period of time," but 5 or 6 weeks is considered long enough. (See, [State v. Epefanio](#))

RCW 9.94A.535(3)(h)(i) – DV Ongoing Pattern of Abuse Sentencing Aggravator

This sentence aggravator requires the State prove that the crime:

- Involved domestic violence or stalking;
- Was part of an ongoing pattern of psychological, physical, or sexual abuse of a victim or multiple victims;
- Involved multiple incidents over a prolonged period of time.

3 FOREIGN PROTECTION ORDERS; DV

FOREIGN PROTECTION ORDERS; DOMESTIC VIOLENCE

AGO 2018 No. 5 (Aug. 28, 2018)

ATTORNEY GENERAL'S OFFICE OPINION

BACKGROUND:

In response to questions posed by justices from the WA Supreme Court, the Office of the Attorney General issued a recent opinion relating to enforcement of out of state and tribal protection orders that provides officers with useful guidelines.

Question 1:

- Are foreign protection orders issued by an out of state court or an Indian tribe given full faith and credit to be enforced by another state's court or tribe? Yes.

Question 2:

- Do such orders have to be registered in our state in order to be enforceable here? No.

3 FOREIGN PROTECTION ORDERS; DV

FOREIGN PROTECTION ORDERS; DOMESTIC VIOLENCE

AGO 2018 No. 5 (Aug. 28, 2018)

ATTORNEY GENERAL'S OFFICE OPINION

LEGAL AUTHORITY:

Washington law defines a foreign protection order as:

- An injunction or other order related to domestic or family violence, harassment, sexual abuse, or stalking,
- For the purpose of preventing violent or threatening acts or harassment against, or contact or communication with or physical proximity to another person
- Issued by a court of another state, territory, or possession of the United States, the Commonwealth of Puerto Rico, or the District of Columbia, or any United States military tribunal, or a tribal court,
- In a civil or criminal action.

The Federal Violence Against Women Act (VAWA) & WA State law deem a protection order “valid” if the issuing court had jurisdiction over the parties and the matter of law, and the person named was given notice and an opportunity to be heard on the order (due process).”

3 FOREIGN PROTECTION ORDERS; DV

FOREIGN PROTECTION ORDERS; DOMESTIC VIOLENCE

AGO 2018 No. 5 (Aug. 28, 2018)

ATTORNEY GENERAL'S OFFICE OPINION

LEGAL AUTHORITY:

What are your obligations as a law enforcement officer faced with enforcement of a foreign protection order?

An officer has the authority to take action on a foreign protection order if the order is “valid on its face.”

For law enforcement purposes, the “valid on its face” standard is met if:

- (1) The name of the court issuing the order is on the document,
- (2) The order has a signature on the judge's line,
- (3) There is a cause number,
- (4) The order has a clerk's stamp or is certified, and
- (5) The text of the order indicates that the authority to enter the order.

Many states, including Washington, have made this determination easier for officers and court personnel by using a standard template for protection orders that complies with the federal and state requirements.

A foreign protection order does not have to be registered with a court in our state to be valid.

4 MISDEMEANOR PRESENCE; FELLOW OFFICER; WARRANTLESS ARREST

FELLOW OFFICER; MISDEMEANOR PRESENCE
State v. Perez, COA No. 76902-2-I (October 29, 2018)
COURT OF APPEALS, DIVISION I

FACTS:

Officer 1 was dispatched to Target for a report of loss prevention struggling with a shoplifting suspect. On arrival, an unknown passerby pointed to a car leaving the parking lot and identified the driver as the suspect's "partner." Officer 1 had dispatch inform other officers that a second suspect may be in the vehicle described by the unknown civilian (who, in the brief minute it took for Officer 1 to take the original suspect into custody, had left the area).

Officer 1 then spoke with the store's LPO who knew the two suspects from various contacts at the store. LPO confirmed the second suspect's name, description, and described the same black car that the unknown civilian had identified. The LPO also provided strong evidence to support that the driver of the car had committed shoplifting or attempted shoplifting.

By that point, Officer 2 had detained the black car in the store parking lot. He informed Officer 1 that he had taken the suspect into custody. There were 3 passengers in the vehicle, and all gave consent for officers to search the vehicle.

4 MISDEMEANOR PRESENCE; FELLOW OFFICER; WARRANTLESS ARREST

FELLOW OFFICER; MISDEMEANOR PRESENCE
State v. Perez, COA No. 76902-2-I (October 29, 2018)
COURT OF APPEALS, DIVISION I

TRAINING TAKEAWAY:

The misdemeanor presence requirement for a warrantless arrest under RCW 10.31.100(1) is met when one officer formulates probable cause for a misdemeanor theft arrest, and a fellow officer relies upon that officer's probable cause to make the physical arrest of the suspect.

RCW 10.31.100(1) applies to a suspect committing a misdemeanor or gross misdemeanor involving:

- Physical harm or threats of harm to any person or property,
- Unlawful taking of property,
- Use or possession of cannabis, or
- Acquisition, possession, or consumption of alcohol by a person under the age of 21.

The statute was previously changed to state that “**A**” **police officer** may make a warrantless arrest (subject to the restrictions listed in the statute) when the offense is committed in the presence of “**AN**” officer. The court found that the plain language allows one officer can make an arrest when the crime was committed or was being committed in the presence of a different officer.

4 MISDEMEANOR PRESENCE; FELLOW OFFICER; WARRANTLESS ARREST

FELLOW OFFICER; MISDEMEANOR PRESENCE
State v. Perez, COA No. 76902-2-I (October 29, 2018)
COURT OF APPEALS, DIVISION I

PRACTICE POINTER:

The Fellow Office Rule allows you to make an arrest even if you don't personally have knowledge of the basis of the reasonable suspicion or probable cause justifying the stop, search, or arrest of a suspect.

The underlying justification may come from another officer or from another agency (via bulletin or flyer).

When a court weighs any challenge to the totality of the underlying evidence used to reach the reasonable suspicion and/or probable cause determination, the fellow officer who made the stop/search/arrest isn't responsible for knowing that information (only that the original officer/agency reached the conclusion that they had sufficient information to act).

- More on the Fellow Officer Rule (or "Collective Knowledge" Rule) can be found with a keyword search in the WA Prosecutor's Association Search and Seizure Manual (2015) [HERE](#).

5 CRIME OF ARREST; THEFT

UNLAWFUL REDEMPTION OF FOOD STAMPS; THEFT

State v. Gray, COA No. 35357-5-III (October 16, 2018)
COURT OF APPEALS, DIVISION III

FACTS:

Defendant used an EBT (electronic benefits transfer) card that he unlawfully acquired (the court opinion doesn't explain how) from a food stamp recipient. The card was used 4 times in 4 days at a local grocery store to purchase groceries. When the card's rightful owners discovered it was missing, they ordered a new card. The new card didn't work because the defendant had used all of their allotted benefits for the month. Evidence pointed to the defendant as the person responsible.

Defendant was charged with 4 counts of Unlawful Redemption of Food Stamps.

5 CRIME OF ARREST; THEFT

UNLAWFUL REDEMPTION OF FOOD STAMPS; THEFT

State v. Gray, COA No. 35357-5-III (October 16, 2018)
COURT OF APPEALS, DIVISION III

TRAINING TAKEAWAY:

Unlawfully using someone's food stamp benefits to buy groceries at a grocery store does not satisfy the elements of the crime of Unlawful Redemption of Food Stamps, RCW 9.91.144.

- The criminal behavior occurs when a person seeks reimbursement from the government for accepting benefits from food stamp recipients – ex: a store or vendor unlawfully seeks reimbursement from the government for accepting a benefit recipient's food stamps.

The intent of the federal food stamp crimes, which are mirrored by our WA State statutes, is to prevent food stamp trafficking and fraud, not individual misuse of food stamp benefits/benefit cards.

5 CRIME OF ARREST; THEFT

UNLAWFUL REDEMPTION OF FOOD STAMPS;
THEFT

State v. Gray, COA No. 35357-5-III (October 16, 2018)
COURT OF APPEALS, DIVISION III

TRAINING TAKEAWAY – FOOD STAMP CRIMES:

RCW 9.91.140 – criminalizes a benefits recipient from **reselling their benefits or the food received from them** (a gross misdemeanor if the value is over \$100, and a misdemeanor if the value is below \$100)

RCW 9.91.142 – criminalizes **trafficking in food stamps by purchasing or acquiring the benefits** (a class C felony if over \$100 in value, a gross misdemeanor if the value is below \$100)

RCW 9.91.144 – criminalizes the redemption of food stamps, which means **seeking reimbursement from the government for accepting benefits from food stamp recipients** (a class C felony)

5 CRIME OF ARREST; THEFT

UNLAWFUL REDEMPTION OF FOOD STAMPS; THEFT

State v. Gray, COA No. 35357-5-III (October 16, 2018)
COURT OF APPEALS, DIVISION III

PRACTICE POINTERS – CRIME OF ARREST, CHARGING:

Always read the RCW carefully before you charge a suspect – many crimes may have titles that seem to fit, but the elements of the crime only apply to very specific facts or situations.

While the officer and/or prosecutor was probably attempting to charge the most specific crime believed to be met, the proper crime in this case was likely Theft.

- An EBT card is an access device that possess value (the financial benefits that enable purchasing of goods). The defendant unlawfully acquired the card (the opinion doesn't say how he obtained the victims' card), and then unlawfully used the benefits/money on the card.
- RCW 9A.56.010 (1)– An “access device” is any card, plate, code, account number, or other means of account access that can be used alone or in conjunction with another access device to obtain money, goods, services, or anything else of value, or that can be used to initiate a transfer of funds, other than a transfer originated solely by paper instrument.

ANNUAL 2018 CIT ONLINE IN-SERVICE TRAINING

The 2018 MANDATORY IN-SERVICE CIT ONLINE TRAINING will be
closed as of 12/31/2018

- **You will NOT be able to access or complete the training after that date!**
 - Further info and BLEA exceptions [here](#)
 - Do you still need to complete the training? Have questions? Go [here](#) for FAQs and LMS course access
- The CIT two-hour in service training is mandated by Statute and WAC
 - [RCW 43.101.427\(2\)\(a\)](#) – The CJTC must ensure all full-time, general authority Washington peace officers who are certified after July 1, 2017, complete a 2-hour online crisis intervention course as part of the annual training required by the commission for all full-time, general authority Washington peace officers employed by a general authority Washington law enforcement agency.
 - [WAC 139-05-300\(1\)\(e\)](#) - As of July 1, 2018, the twenty-four hours must include the successful completion of the training commission's two-hour annual online crisis intervention course prescribed under RCW [43.101.427](#).

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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