LAW ENFORCEMENT DIGEST
October 2022

COVERING CASES PUBLISHED IN OCTOBER 2022

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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.

TOPIC INDEX

CASES

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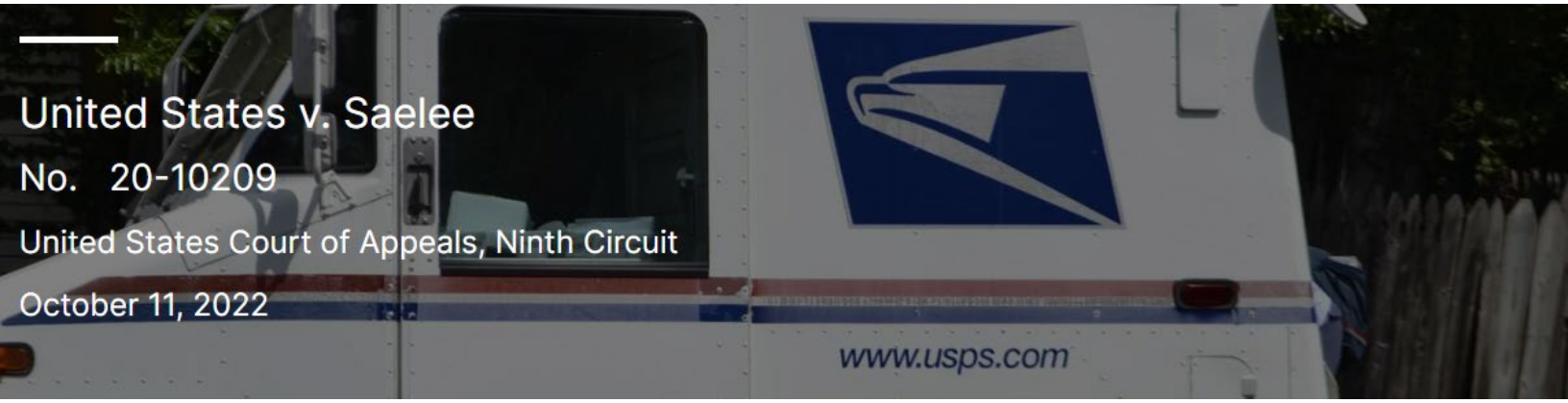
The materials contained in this course are for training purposes. All officers should consult their department legal advisor for guidance and policy as it relates to their particular agency.



TOPIC: The independent source doctrine

Factual Background

On April 16, 2018, a U.S. Customs and Border Protection (CBP) K-9 unit at JFK International Airport in New York alerted to a package from Germany, and upon opening the package the CBP officer discovered what appeared to be "Ecstasy" pills. The package was from Germany and addressed to "Tony Fin" in Richmond, California. The package had a tracking number that could be used to determine its status of delivery with the United States Postal Service (USPS). The next day, a second CBP officer inspected a parcel that listed the same sender and addressee and discovered more Ecstasy pills. This parcel also had a tracking number. Combined, the packages contained 2,971 pills.

The packages were promptly delivered to a Transnational Narcotics Team with Homeland Security Investigations (HSI) in San Francisco. HSI used the California DMV and USPS to learn that Tony Saelee resided at the address where the packages were supposed to be delivered. Agents learned that Tony Saelee used the name "Tony Fin" online.

Agents decided to arrange a "controlled delivery" of the packages to Saelee. They replaced the Ecstasy pills with dummy pills and resealed the packages. The agents requested the help of the USPS Inspection Service (USPSIS) by creating false entries in the USPS tracking system and have USPS agents dress in regular delivery clothes to deliver the packages to Saelee's address.

A few days before the controlled delivery, HSI Agent Anderson prepared a nearly complete affidavit in support of a search warrant for Saelee's apartment. Agent Anderson considered applying for an anticipatory warrant but decided to obtain a traditional warrant after the controlled delivery and based on the facts of the actual controlled delivery.

The controlled delivery took place on the morning of April 23, 2018. The USPSIS agent drove a USPS mail truck to Saelee's apartment. HSI agents waited in the truck while the USPSIS agent made the delivery. The USPSIS agent knocked on the door and asked for Tony Fin. Saelee said he was Fin and accepted the packages. A few minutes after the delivery, HSI agents proceeded to Saelee's apartment, knocked on the door, and announced their presence. Agent Anderson had decided to arrest Saelee and secure the premises right away because he believed that he had both probable cause to arrest Saelee and sufficient exigent circumstances to justify taking immediate action. Agent Anderson was concerned for agent safety because he thought Saelee might realize he had fake drugs and that "his arrest was imminent."

Saelee was arrested around 9:35 a.m. for attempted possession of a controlled substance with intent to

distribute. Incident to the arrest, agents performed a "protective sweep" of the apartment. At the suppression hearing, the district court concluded that in addition to the protective sweep, agents had also conducted an extensive search prior to obtaining a warrant. Metadata from the digital photos taken by agents indicated that the agents began seizing and photographing items by 9:54 a.m., which was almost 50 minutes before the magistrate judge signed a search warrant.

In the 50 minutes between the time agents entered the apartment and the warrant was signed, agents posted sheets of paper labeling each room, took digital photos showing the rooms with the labels, and took Saelee's cellphone. The agents did not, however, search the phone.

Agent Anderson testified at trial that as soon as the apartment was secured, he called the U.S. Attorney's Office and dictated the final paragraph for the warrant affidavit he started days earlier and the completed application was then submitted to a federal magistrate judge. About one hour later, Agent Anderson telephonically swore before the magistrate judge to the veracity of the contents of the affidavit. Its only reference to the events surrounding the actual delivery and aftermath simply detailed the events of the controlled delivery and the agents' securing of the apartment.

The warrant was granted at 10:43 a.m. It authorized agents to search Saelee's apartment for any contraband drugs or drug trafficking paraphernalia; any evidence of communications, whether in paper, electronic, or other form between Saelee and anyone suspected to be involved with the drug trafficking conspiracy; documents or records of financial transactions or instruments; and electronic devices that contain evidence of certain drug-related communications (which could only be searched in accordance with specified standard protocols attached to the warrant).

Upon searching the phone, agents discovered text messages and Facebook messages that were related to the drug trafficking conspiracy. In addition to other drug related paraphernalia, agents found the two packages in Saelee's bedroom and 45 caliber ammunition.

Saelee was indicted on two counts. One count of attempted possession of Ecstasy with intent to distribute, and one count of conspiracy to distribute Ecstasy and to possess it with intent to distribute. Before trial, Saelee moved to suppress the evidence seized from his apartment and phone, as well as all observations made by the agents during their warrantless search. The district court denied the motion, holding that, even assuming the agents' actions prior to obtaining the warrant violated the Fourth Amendment, the "independent source" doctrine made suppression inappropriate.

Saelee was convicted on both counts and was sentenced to 20 months' imprisonment on each count, to run concurrently. Saelee appealed.

Analysis of the Court

The Ninth Circuit Court of Appeals (the Court) proceeded with the appeal with the assumption that all the items seized from Saelee's apartment were seized before the warrant was obtained.

Saelee contended that, without a warrant, the agents encroached upon the curtilage of his home with the intent to arrest him; that they arrested him in his home without a warrant and in the absence of exigent

circumstances; and that before obtaining a warrant, the agents entered Saelee's apartment and conducted an extensive search, which well exceeded the scope of a protective sweep or a permissible securing of the premises, and seized the delivered packages, Saelee's cell phone and wallet, and ammunition in his bedroom. It was undisputed that prior to the issuance of the warrant nothing was removed from the premises and the contents of Saelee's phone were not examined.

The Court noted that the "exclusionary rule is only applicable… where its deterrence benefits outweigh its substantial social costs. The exclusionary rule has certain exceptions, with one being the "independent source" doctrine. Under that doctrine, suppression of evidence is not warranted when that evidence is **later obtained independently from activities untainted by the initial illegality.** This exception ensures that **police will be placed in the same position, not a worse position, that they would have been in if no police error or misconduct had occurred.**

To establish that evidence that was initially acquired unlawfully has later been independently obtained through an untainted source, the Government must show that **no information gained from the Fourth Amendment violations affected either (1) the law enforcement officers' decision to seek a warrant or (2) the magistrate's decision to grant it**.

The Court found no clear error in the district court's factual finding that the agents' decision to seek a warrant was unaffected by the alleged Fourth Amendment violations. Agent Anderson had prepared a near-complete warrant application in consultation with the U.S. Attorney's Office in the days before the controlled delivery. Only the final paragraph detailing the delivery and the agents' securing of the apartment were included in the warrant affidavit after the initial entry into Saelee's apartment at 9:35 a.m. Agent Anderson called the U.S. Attorney's Office at approximately 9:43 a.m. to dictate the final paragraph. The warrant was granted at 10:43 a.m., after Agent Anderson telephonically swore to the contents of the warrant application before a magistrate judge.

Additionally, the Court concluded that the magistrate judge's decision to issue the warrant was plainly not affected by the asserted Fourth Amendment violations. The Court noted that the only facts included in the warrant application that were learned as a result of the alleged violations were that Saelee had been arrested and the premises secured. The Court concluded that this information added nothing to whether there was probable cause to search the premises, and it was clear that it did not influence the magistrate judge's decision to issue the warrant.

Though the two independent source doctrine requirements were met, Saelee made the additional argument that the doctrine should not apply because agents seized and maintained continuous control over the items in his apartment. Since the evidence had already been seized and in the possession of the agents, there was only one seizure and any subsequent seizure pursuant to the warrant was illusory and not factually independent.

The Court noted that in previous cases courts have held that knowledge of contraband could be acquired during an unlawful entry and could *also* be acquired at the time of entry pursuant to a valid warrant, and that if that later acquisition was not the result of the earlier entry there is no reason why the independent source doctrine should not apply. Essentially, it would make no sense to say that, in order for the Government to be able to invoke the independent source doctrine, it must first return to Saelee's custody and control all of the items that were seized pending issuance of a warrant.

What mattered was that the evidence obtained as a result of the alleged Fourth Amendment violations was independently rediscovered or reseized when agents executed a search warrant that was both sought and issued independently of any such violations.

The ruling of the district court was affirmed.

Training Takeaway

Under the **independent source doctrine, the suppression of evidence is unwarranted, even where the evidence was initially discovered during or as a consequence of an unlawful search, when that evidence is later obtained independently from activities untainted by initial illegality.**

To establish that evidence that was initially acquired unlawfully has later been independently obtained through an untainted source, and thus is admissible under the independent source doctrine, **the Government must show that no information gained from the Fourth Amendment violations affected either (1) the law enforcement officer's decision to seek a warrant or (2) the magistrate judge's decision to grant it.**

In this case, **the evidence seized by Homeland Security agents after their illegal entry into the defendant's apartment and during the search of his apartment before obtaining a search warrant fell within the scope of the independent source exception to the exclusionary rule, *even though the items that were seized before the warrant was issued stayed in the HSI agent's custody.*** This is because the HSI agent had already prepared what was essentially a complete warrant application before the search and completed the warrant application minutes after the HSI agent's initial entry into the apartment and prior to the search activities. The warrant was granted an hour later, and the only facts included in the warrant that the agents learned as a result of the Fourth Amendment violations were that the defendant had been arrested and the apartment had been secured.

The independent seizure doctrine does not require that officers return unlawfully seized objects to private control before reseizing them pursuant to a valid warrant.

> **NOTE:** This is a Ninth Circuit Court of Appeals decision applying federal law, not laws of the state of Washington. However, the interpretation of the Fourth Amendment is binding and informative.

EXTERNAL LINK: View the Court Document

TOPIC: Administrative exception to the Fourth Amendment's warrant requirement

Facts Summary

The City of San Diego owns thousands of parking spaces located on City property. The San Diego Municipal Code governs the use of parking spaces, and drivers that violate the Code's parking regulations may be required to pay civil penalties. The City imposes time limits that are publicly posted that restrict how long a vehicle may remain in a particular parking spot.

For the last fifty years, San Diego has used tire chalk as one method of enforcing time limits for its parking spaces. To chalk a vehicle, a parking enforcement officer places a small impermanent chalk line on the tire tread of a parked vehicle. The chalk mark on the tire rubs off within a few tire rotations after driving. The parking officer must place a chalk mark on every vehicle parked in a given area of the city – parking officers do not single out any particular vehicle. If the vehicle's chalk mark is undisturbed after the parking limit has expired, this indicates that the vehicle has exceeded the time limit for the space. The parking office may then issue a citation for the violation of the City's parking regulations.

San Diego's parking enforcement methods, including chalking, are intended to enhance public safety, improve traffic control, and promote commerce. Insufficient enforcement could lead to a lack of compliance, and consistent enforcement increases parking space turnover which allows the City to increase the availability of parking in high demand areas. Without parking space turnover, vehicles may circle blocks for extended periods of time searching for a parking space, they may double park, or park in zones reserved for buses, disabled drivers, or emergency personnel. These acts, in turn, lead to increased congestion, a lack of parking for emergency vehicles, blocked fire hydrants, more accidents, and greater risks to pedestrians. Although there are other ways to enforce the City's parking regulations, chalking is the most cost effective and efficient.

The plaintiff's in this case each received at least one parking violation in the City of San Diego after their cars were chalked. They filed a putative class action under 42 U.S.C. §1983, alleging that the tire chalking violated the Fourth Amendment. The plaintiff's asked for an injunction against chalking and monetary damages. The district court concluded that tire chalking was a Fourth Amendment search, but that it is justified under the administrative search exception to the warrant requirement. The district court granted summary judgment to the City, and the plaintiff's appealed.

Analysis of the Court

The Ninth Circuit Court of Appeals (the Court) noted that the Fourth Amendment applies to the City of San Diego through the Fourteenth Amendment. Though the chalking of tires has been documented since at least the 1930's, the question of the practice's constitutionality had never been addressed. The Court noted that typically, "three-quarter's of a century of settled practice is long enough to entitle a practice to 'great weight in a proper interpretation' of the constitutional provision." Even still, the Court endeavored to undertake a full analysis of the issue under the Fourth Amendment.

The Court assumed, without deciding, that the chalking of parked vehicles constituted a search under the Fourth Amendment. Instead, the Court focused on whether the practice was unreasonable.

Warrantless searches, it noted, are presumptively unreasonable under the Fourth Amendment, subject to certain exceptions. One of the exceptions is known as the "administrative search" or "special needs" exception. In City of Los Angeles v. Patel, the Supreme Court explained that **search regimes where no warrant is ever required may be reasonable where 'special needs… make the warrant and probable cause requirement impracticable,' and where the 'primary purpose' of the searches is 'distinguishable from the general interest in crime control.'"**

For example, in the past, the Supreme Court has permitted various types of dragnets in which police indiscriminately stop motorists without individualized suspicion or a warrant, when the stops are not used for the primary purpose of detecting criminal wrongdoing. The Supreme Court has upheld immigration checkpoints and sobriety checkpoints. The Supreme Court has also upheld suspicion-less checkpoints set up near the location of a hit-and-run that were set up for the purpose of asking drivers about the accident. Additionally, the Supreme Court made clear that a roadblock set up to check driver's licenses and registrations would be permissible because it rests on a purpose of ensuring highway safety, rather than general crime control.

The administrative use exception has also been invoked to justify warrantless searches of certain closely regulated businesses. These legislative schemes (like checking liquor licenses) authorizing administrative searches of commercial property do not necessarily violate the Fourth Amendment. After a review of many different schemes allowing warrantless administrative searches, the Court noted that neither the Ninth Circuit nor the Supreme Court has limited the application of the administrative search exception to particular contexts or factual scenarios. However, some guiding principles have emerged: **Warrantless administrative searches must bear a sufficient connection to the government interest they serve and cannot advance as their primary purpose uncovering evidence of ordinary criminal wrongdoing.** Additionally, **where the Fourth Amendment intrusion serves special government needs, beyond the normal need for law enforcement, it is necessary to balance the individual's privacy expectations against the Government's interests to determine whether it is impractical to require a warrant or some level of individualized suspicion in the particular context.** Finally, **even when a warrant is not required, a search is not beyond Fourth Amendment scrutiny; for it must be reasonable in its scope and manner of execution.**

Put differently, **while administrative searches are an exception to the Fourth Amendment's warrant requirement, they are not an exception to the Fourth Amendment's standard of reasonableness.** Even with this guiding principle, the Court cautions lower courts against these broader principles becoming requirements

in interpreting administrative search regimes. Instead, the particular facts in each case must be evaluated on their own.

In evaluating the City's chalking regime, the Court concluded that tire chalking does not have the impermissible "primary purpose" of "uncovering evidence of ordinary wrongdoing." **The primary purpose of tire chalking was not a general interest in crime control, but to assist the City in its overall management of vehicular traffic and the use of city parking spots. As an enforcement mechanism, chalking also functions as a deterrent, encouraging compliance with City parking regulations.** Just because the chalking accomplishes this goal through the use of law enforcement techniques does not automatically transform it into a crime control device for Fourth Amendment purposes.

Moreover, the Court concluded that San Diego's practice of tire chalking was reasonable. It analyzed the reasonableness of the search on the basis of the individual circumstances of San Diego's tire chalking regime. **The Court noted that San Diego's chalking of tires is part of a broader program of parking and traffic management that reflects a substantial and compelling administrative objective. It was plain to the Court the importance of free-moving vehicular traffic and parking availability to the basic functioning of a municipality and the quality of life of its residents, businesses, and visitors**. As noted above, the failure to ensure compliance with the City's parking regulations can lead to double-parking, illegal parking, more accidents, reduced air quality, and impediments to emergency vehicles. These harms, the Court noted, also work to the City's fiscal detriment because local businesses depend on the availability of parking, and the City's tax revenues in turn depend on the level of commercial activity.

The Court noted that in a variety of other legal contexts, **courts have recognized the strong governmental interest in managing traffic and parking. Courts are aware of the danger to life and property posed by vehicular traffic and of the difficulties that even a cautious and experienced driver may encounter.** The City's interests, therefore, are strong enough to permit the use of chalking.

Finally, the Court noted that the context in which chalking is used further bears out its reasonableness. **There is already a reduced expectation of privacy for vehicles. There is even more so for vehicles that are parked on city streets, where drivers frequently find flyers on their windshields and can also reasonably expect greater administrative scrutiny for compliance with parking laws – expectations not unlike those of the closely regulated businesses for which the administrative search exception is routinely applied.**

Simply put, **tire chalking does not present the risks of government abuse or overreach that may be present in other contexts in which the government seeks to operate without a warrant.**
The judgment of the district court was affirmed.

Training Takeaway

Warrantless searches are presumptively unreasonable under the Fourth Amendment, subject to certain exceptions.

Search regimes where no warrant is ever required may be reasonable where special needs make the warrant and probable cause requirement impracticable, and where the searches' primary purpose is distinguishable from a general interest in crime control. Warrantless administrative searches must bear a

sufficient connection to the governmental interests they serve and cannot advance as their primary purpose uncovering evidence of ordinary criminal wrongdoing.

Where a Fourth Amendment intrusion serves a special government need, beyond the normal need for law enforcement, it is necessary to balance an individual's privacy expectation against the government's interests to determine whether it is impractical to require a warrant or some level of individualized suspicion in each particular context. Even when a warrant is not required, a search is not beyond Fourth Amendment scrutiny, for it must be reasonable in its scope and manner of execution.

While administrative searches are an exception to the Fourth Amendment's warrant requirement, they are not excepted from the Fourth Amendment's standard of reasonableness. And, the administrative search exception does not invariably require a special need premised on an imminent threat to public health or safety, or circumstances otherwise demanding immediate action in face of dangerous conditions.

For example, the primary purpose of San Diego's practice of chalking tires was to assist the city in its overall management of vehicular traffic and the use of city parking spots, rather than uncovering evidence of ordinary criminal wrongdoing or serving its general interest in crime control. Thus, the practice was constitutional under the Fourth Amendment, even though chalking could lead to a driver receiving a parking infraction. There was a close connection between the chalking of tires and the harm it sought to prevent: vehicles staying too long in city parking spots. Moreover, San Diego required parking officers to chalk all cars in a given area.

The reasonableness of administrative searches is considered on the basis of individual circumstances, **which requires a court to evaluate (1) the gravity of public concerns served by the search, (2) the degree to which the search advances the public interest, and (3) the severity of interference with individual liberty.**

In this case, San Diego's practice of chalking tires was a reasonable means to advance the city's substantial and compelling administrative objective of managing vehicular traffic and use of city parking spots. Thus, it fell within the scope of the administrative search exception to the Fourth Amendment's warrant requirement.

EXTERNAL LINK: View the Court Document

State v. Valdiglesias LaValle
No. 82869-0-I
Court of Appeals of Washington, Division 2
October 10, 2022

TOPICS: **Meaning of "thing of value" under the solicitation statute RCW 9A.28.030(1) & The unlawful requests exception to Washington's Privacy Act's prohibition on one party recordings**

Facts Summary

Vanessa LaValle met Timothy Grady on an online dating app. She and Grady, 25 years her senior, got married in 2008 and had two children. In 2015, Grady filed for dissolution of marriage. Following the dissolution, LaValle was awarded full custody of the children and Grady was required to pay her child support. However, in 2019, Grady was awarded full custody and LaValle was ordered to pay child support to Grady. LaValle was granted four-hour unsupervised weekly visitation with her children.

On June 2, 2020, while the children were visiting LaValle, one of the children heard LaValle and her other child talking about "bad stuff" and "rat poison." The child decided to record the conversation. Grady had told the children to record things and one of the child's friend's mother had also suggested the children record things for protection.

On the recorded conversation, LaValle can be heard telling her children that she loves her children and wants them to be with her 100% of the time. LaValle instructed the children to put rat poison in Grady's wine and to keep it secret. She further instructed the children to call the police once Grady had died, but to keep the poison a secret. Near the end of the recording, LaValle can be heard telling the children that she prays for Grady's death every day, and that if the children poisoned him, "… and we are forever (inaudible) live together…"

Grady picked the children up and heard the recording. They decided to keep the recording a secret until after one of the children's birthday, which was the next day. However, during the birthday party the next day, the child that recorded the conversation shared it with their friend, and the friend's mother contacted child protective services and the police.

The State charged LaValle with solicitation to commit murder in the first degree and solicitation to commit assault in the first degree. LaValle moved to suppress the audio recording under Washington State's Privacy Act (RCW 9.73), which provides that one party to a private conversation may not record the conversation without the consent of the other party. The trial court agreed with the state that the recording fell within an exception in the act, which provides that conversations **"which convey threats of extortion, blackmail, bodily harm, or other unlawful requests or demands… may be recorded with the consent of one party to the conversation (RCW 9.73.030(2)(b))**. The court denied the motion to suppress.

LaValle also moved to suppress under the theory that the facts did not support a charge of solicitation because the statement "we will be together forever: did not constitute a thing of value. The trial court concluded that the "offer of care and being together 'forever and ever' is not money but is a 'thing of value' under RCW 9A.28.030(1)." The court denied the motion to dismiss.

A jury convicted LaValle on both counts, and the court dismissed the solicitation to commit assault in the first degree to prevent double jeopardy. LaValle was sentenced to 180 months.

LaValle appealed.

Analysis of the Court

LaValle's appeal rested on two arguments. First, she contended that the court made an error when it denied her motion to suppress. LaValle's second argument was that her promise that the children would live with her forever was not "a thing of value" as contemplated by the solicitation statute.

With respect to LaValle's first argument, the court noted that **the privacy act is implicated when one party records a conversation without the other party's consent.** Washington's Privacy Act prohibits the recording of **any private conversation, by any device electronic or otherwise designed to record or transmit such conversations regardless of how the device is powered or actuated without first obtaining the consent of all the persons engaged in the conversation**. Moreover, **evidence obtained in violation of the act is inadmissible for any purpose at trial**.

However, there is an exception provided by the statute. **Conversations which *convey threats of extortion, blackmail, bodily harm, or other unlawful requests or demands* may be recorded without the consent of one party to the conversation**.

LaValle contended that the statute requires an explicit threat. The Court of Appeals noted that the Washington Supreme Court has held that discussing a threat in the planning stages falls under the word "convey" of RCW 9.73.030(2)(b). The Court of Appeals reasoned that the recording portrayed LaValle teaching one of her children what was needed to do to poison Grady and cause him to die. She told the child not to tell anyone about it and to keep it a secret between them. These statements conveyed a request that is of a similar nature to a threat of bodily harm – the poisoning to death of Grady.

The Appeals Court held that the trial court properly denied LaValle's motion to dismiss.
LaValle's second argument was that her statement to her child that following Grady's death they would "be together forever" is not a "thing of value" as provided by Washington's criminal solicitation statute.
The Washington criminal solicitation statute provides that **"a person is guilty of criminal solicitation when, with intent to promote or facilitate the commission of a crime, he or she *offers to give or gives money or other thing of value* to another to engage in specific conduct which would constitute such crime or which would establish complicity of such other person in its commission or attempted commission had such a crime been attempted or committed."**

The term "thing of value" is not defined in the statute or anywhere in title 9A of the RCW, so the court looked to the plain language of the phrase. The Court noted that "thing of value" is immediately preceded by the

term “money.” By its plain language and context, the statute indicates that **one may solicit the commission of a crime by offering to give or giving of either money or a thing of monetary value** in order to induce someone to commit a crime.

Moreover, in other chapters of the RCW, the legislature has defined “thing of value.” For example, the Washington Gambling Act defines “thing of value” as **“property, any token, object or article exchangeable for money or property, or any form of credit or promise, directly or indirectly, contemplating the transfer of money or property or of any interest therein, or involving extension of a service, entertainment or a privilege of playing at a game or scheme without charge.”** RCW 9.46.0285.

The Court noted that Washington adopted most of the language of its solicitation statute from the Model Penal Code, but removed the words “commands, encourages, or requests,” from the language of the RCW. Taking into account the legislature’s omission of these terms, and the use of “thing of value” in other statutes, the Court held that, under RCW 9A.28.030(1), **“thing of value” means things, tangible or intangible, that have monetary value.**

Because the evidence did not establish that LaValle offered to give her child a thing of value in exchange for the poisoning of Grady, the Court reversed and remanded to the trial court to dismiss LaValle’s conviction with prejudice.

Training Takeaway

Typically, the Privacy Act is implicated when one party records a conversation without the other party’s consent. Additionally, evidence obtained in violation of the Privacy Act is inadmissible for any purpose at trial. However, there is an exception to the Privacy Act’s prohibition against the admission of recorded conversations without the consent of the other party when the conversation conveyed **threats of extortion, blackmail, bodily harm, or other unlawful requests or demands**.

This exception does not require an offer of consideration in exchange for performance of the unlawful act. Rather, a trial court merely has to determine **whether the conversation was of a similar nature to a threat of extortion, blackmail, or bodily harm.**

Under RCW 9A.28.030, a **“thing of value” means things, tangible or intangible, that have monetary value.**

EXTERNAL LINK: View the Court Document

Law Enforcement Digest – October 2022

TOPICS

1. The independent source doctrine
2. Administrative exception to the Fourth Amendment's warrant requirement
3. Meaning of "thing of value" under the Solicitation statute RCW 9A.28.030(1)
4. The unlawful requests exception to Washington's Privacy Act's prohibition on one party recordings

CASES

1. United States v. Saelee 20-10209 (October 11, 2022)
2. Verdun v. City of San Diego 21-55046 (October 26, 2022)
    a. 42 U.S.C. §1983
    b. City of Los Angeles v. Patel
3. State v. Valdiglesias LaValle 82869-0-I (October 10, 2022)
    a. RCW 9.73
    b. RCW 9.73.030
    c. RCW 9A.28.030
    d. RCW 9.46.0285

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]