LAW ENFORCEMENT DIGEST – December 2020

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Each month's Law Enforcement Digest covers court rulings issued by some or all of the following courts:

- Washington Courts of Appeal
- Washington State Supreme Court
- Federal Ninth Circuit Court of Appeals
- United States Supreme Court

Cases are briefly summarized, with emphasis placed on how the rulings may affect Washington law enforcement officers or influence future investigations and charges.

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.

CASES

- State v. Douglas Virgil Arbogast, Court of Appeals, Division III; Filed December 24, 2020
- State v. Benjamin Batson, Supreme Court of Washington; Filed December 23, 2020
- State v. Teresa June York, Court of Appeals, Division Two; Filed December 29, 2020
- State v. Michael Patrick Cargill, Court of Appeals, Division Three; Filed

December 15, 2020

- State v. David Raymond Mullins, Court of Appeals, Division Three; Filed December 3, 2020

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 authored by WA Association of Prosecuting Attorneys' Senior Staff Attorney, Pam Loginsky

QUESTIONS?

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State v. Douglas Virgil Arbogast
No. 36250-7-III

Court of Appeals, Division III

Filed December 24, 2020

Facts Summary

In July of 2017, members of the Washington State Patrol Missing and Exploited Children Task Force undertook a "Net Nanny" sting operation in the Tri-Cities area through placing ads in the now-defunct "Casual Encounters" section on Craigslist. Casual Encounters being described as a section "designed for no-strings-attached sex" and was used to place a few different ads by WSP, including ads for fictional children who were looking for sex themselves.

The ad in the case at hand was placed by a fictional mother under "w4m" (woman for men), which read:

> *Mommy loves to watch family fun time. Looking for that special someone to play with. 100%. I know this is a long shot, but I have been looking for this for a long [time] and haven't had any luck looking for something real and taboo. If this is still up then I am still looking. send me your name and your favorite color so I know you are not a bot. I like to watch ddlg daddy/dau, mommy/dau, mommy/son.*

A task force officer acknowledged that the ad was cryptic and might not be recognized as advertising sex with children. A more overt advertisement would have been removed immediately by Craigslist. The officer testified that there were key terms in the ad – taboo, ddlg, daddy/dau, mommy/dau, mommy/son – that had connotations for child predators. The officer also testified that the responses received for the ad also included people who were not looking to have sex with children.

70-year-old Douglas Arbogast responded with his name and favorite colors as directed in the ad. Arbogast testified that he had responded to a half dozen "woman for men" ads on Craigslist because sex for his wife of 48 years had become painful after her hysterectomy. Arbogast testified that responding to such ads had paid off once, a few months earlier, in which he met a 50-year old woman at a local motel for sex. Once Arbogast responded to the ad, a sham conversation went on between a detective and Arbogast.

In that conversation, the fictitious mother tells Arbogast that she has two children – a 13-year-old boy and an 11-year-old girl. When asked to tell him about herself, the fictitious mother texts:

> *"I was raised very close to my father. He started sleeping with me when i was young...at first i was scared but really enjoyed it. He was so gentle and loving, my mom knew so it made our home open. i miss those days. i want my kids to experience the same closeness plus they need a teacher to help them with sex when they get older."* The fictitious mother went on to say, *"i have to be honest. i lost my attraction to men a while back. I can't get enough of young boys about my sons age. their innocence is amazingly a turn on for me".*

Arbogast responded that he is older, but if she wanted to *"try someone older, then game on"* and talks about still having his hair. The fictitious mother goes on to talk about having had a very good man in their lives for a year or so, but that they had lost him due to a move with the military. She talks about the man being bi and that he had been very gentle with them, teaching them oral and other skills. She explains that it is hard to find the right guy and that she needs to be careful and so does he. She explains that she is not interested in men, especially older, and reiterates that she prefers boys her son's age and asks if he can be the daddy to her kids.

At this point, Arbogast finds a prior email that the fictitious mother had sent earlier and referenced in that conversation. The email had stated, *"I need you to be honest about what you want, that is best and makes sure we all get what we want. My girl is 11 and my boy is 13. She is not totally active, but still likes to play and is very ready and mature. My son is 13 and very active. I'm single and looking for someone who is open and free to new*

ideas. If this fits you then lets talk and if it works out we can meet up and have some fun."

After the fictitious mom had asked if he could be the daddy to her two kids, Arbogast replied that he was sorry to hear that [apparently in reference to the other man leaving due to the military] and that he just read the missed email. Arbogast states that he has never done that and that he just wanted to be with the mom. He stated that he didn't know if he could help do kids. When the fictitious mother clarifies that she is not looking for herself but looking for someone to be with her kids and wishes him good luck with his search, Arbogast states, *"I can be good with them. Just never thought about it that way."*

The two then messaged for nearly two hours about what the fictitious mother wanted and whether Arbogast was willing to provide it. The two also exchanged photos. The fictitious mother showed 40-50-year-old woman in what appears to be a bra or similar top. The conversation included the fictitious mother suggesting that her children could engage Arbogast with kissing, touching, oral, and non-anal penetration, which he did not rule out. Arbogast did state repeatedly that he had not previously engaged in the conduct the fictitious mother was suggesting. The mother made indications that she might get involved and that when he got to her place, they could all get naked.

Arrangements were made for him to come to the fictitious mother's home and he was told to bring condoms and lube. Arbogast and the fictitious mother have a conversation about which child he would start with, what the children should wear, and what they would be doing together. Arbogast appears to be going along with these plans, but states again that he has not done this before and that he could do almost anything without penetration. Arbogast arrived at the apartment and the detective playing the part of the fictitious mother left the room to get the kids once he was inside. Thereafter, a team of officers arrested Arbogast.

Arbogast did not have the requested condoms or lube on him or with him. Arbogast was read his rights, which he waived, and he also provided the officers access to his phone to be searched. During the interview, Arbogast stated several times that he had

only come to the apartment to meet with the mom and that he was not attracted to children. Arbogast admitted that he understood what the fictitious mother was offering, but that he had been "BS-ing" the mom and "going with the flow." A forensic download of Arbogast's phone revealed no indication of him seeking sex with children, child porn, or any other like communications or searches. No evidence was recovered from Arbogast's vehicle and no deception was found with regard to questions about sexual contact with anyone under the age of 16 on a polygraph.

Arbogast was charged with attempted rape of a child for both children as a result of traveling to the undercover location with the intent to engage in sexual intercourse with the fictional children.

Arbogast claimed the defense of entrapment prior to trial, but was denied the use of the polygraph results, access to the other conversations with other targets during the sting, and ability to present Arbogast's lack of criminal history. Defense had argued that Arbogast's lack of criminal history was relative to the defense of entrapment, specifically because it showed a lack of predisposition to attempted child rape. The trial court concluded that there was not sufficient evidence of "more than the normal amount of persuasion" in order to allow the jury to be instructed on entrapment. The court also did not allow evidence regarding whether or not the defendant had engaged in this type of behavior previously to show a lack of predisposition.

Arbogast testified at trial that he did not like the idea of adults having sex with children. He testified that he had not been looking for that when he answered the ad, but had gone along with what she was looking for to get on her good side because he believed there was a possibility of having sex with her. Arbogast testified that he did not intend to have sex with either of the children when he went to the apartment. **The jury found Arbogast guilty of both charges and he appealed. The issue on appeal was related to the trial court's refusal to instruct on entrapment.**

Training Takeaway

Washington courts have long recognized the existence of the common law defense of entrapment. The common law definition was codified into RCW 9A.16.070 and provides:

1. In any prosecution for a crime, it is a defense that:
    a. The criminal design originated in the mind of law enforcement officials, or any person acting under the direction, and
    b. The actor was lured or induced to commit a crime which the actor had not otherwise intended to commit.
2. The defense of entrapment is not established by a showing only that law enforcement officials merely afforded the actor an opportunity to commit a crime.

The statutes restates the subjective test of entrapment applied by the federal and Washington state courts, which focuses on the issue of whether the defendant was predisposed to commit the crime rather than on the conduct of the State to induce or entice the defendant. The Washington Supreme Court has held that 9A.16.070 requires proof that the defendant was tricked or induced into committing the crime by acts of trickery by law enforcement agents and that he would not otherwise have committed the crime. In Washington, a party is entitled to have the jury instructed on its theory of the case if there is evidence to support it. A trial court can deny a request for an affirmative defense instruction only where no credible evidence appears in the record to support it.

Here, the court of appeals found that the trial court had erred in denying Abrogast's defense of entrapment. It was undisputed that the criminal design originated in the mind of law enforcement officials, or any person acting under their direction within the meaning of the statutory defense. Further, as entrapment was a possible defense, evidence that Arbogast had no criminal history, particularly no history of child

predation, was evidence of a pertinent trait of character: that he lacked the predisposition to commit child rape. The court of appeals further found that the trial court erred in considering only whether the undercover officer used more than the "normal amount of persuasion."

The court stated that the legislature explicitly provided under RCW 9A.16.070 that the defense of entrapment is not established by a showing only that law enforcement officials merely afforded the actor an opportunity to commit a crime. The RCW also does not otherwise limit the manner in which a defendant might be "lured or induced" to commit a crime he had not otherwise intended to commit. Many kinds of evidence can be used to prove predisposition such as ready compliance with an illegal request, previous commission of the same crime, acts showing eagerness to commit the crime, substantial effort in investigating and arranging an illegal transaction, and familiarity with the practices of an illegal trade. The court stated that logic, therefore, dictates that contrary evidence can be used then to prove a lack of predisposition.

Here, the trial court too narrowly considered only police conduct when the focal point of the defense was Abrogast's lack of predisposition. Abrogast testified that he had never had sex with children or any interest in sex with children. It was undisputed that, prior to responding to the ad in this case, Abrogast had not been convicted of, charged with, or even suspected of a sex crime against a child. Abrogast had responded to what was posted as a "woman for men" ad that was admittedly cryptic and that might not have been recognized as advertising sex with children. In fact, information was presented that other responders to the ad had not recognized the ad as advertising sex with children. The evidence showed that once Arbogast recognized what was being offered, he responded that he had never done that and didn't know if he could help do kids. Abrogast repeatedly stated he had never engaged in such conduct with children before.

Abrogast had not picked up or brought with him the requested lube or condoms and no incriminating evidence was found on his phone or in his car. The detective involved in the conversation between the fictitious mom and Abrogast also made

suggestions that the mother's participation was a possibility. Further, it was made clear that whatever was going to be done with her fictitious children would only be done under her protective oversight and rules. The conversation was not involving a mother prostituting her fictional children, but rather presented that her as a loving mother who sought to provide something she had benefitted from as a child.

Similar cases in the federal courts had found that while parental consent is not a defense to statutory rape, it nevertheless could have an effect on the "self-struggle to resist ordinary temptations." Those cases further found that this is particularly so when the parent does not merely consent but casts the activity as an act of parental responsibility and the selection of a sexual mentor as an expression of friendship and confidence. Not only would this diminish the risk of detection, but it would also alleviate fears that a defendant may have that the activities would be harmful, distasteful, or inappropriate. This is particularly true where a parent claims to have benefitted from such experiences herself, which was also the case here.

Without the instruction that Arbogast may have been lured or induced to commit the crimes of attempted rape of a child, it could not be known if the jury would have made the same decision. **Because Arbogast was entitled to at least present the defense and the jury was not given the opportunity to consider entrapment, the convictions were reversed, and the case was remanded for retrial.**

External Link: courts.wa.gov/opinions/pdf/362507_pub.pdf

Facts Summary

In 1984, Benjamin Batson pled guilty in an Arizona court to two counts of sexual conduct with a minor. As a result of that conviction, Arizona law required Batson to register as a sex offender for life. At some point prior to April 6, 2009, Batson moved to Washington. At that time, the State required individuals to register as sex offenders only if their out-of-state offense would have been classified as a sex offense in Washington. Since Batson's Arizona conviction arose from sexual contact with a 16-year old, his offense would not have been a crime in Washington as the age of consent in Washington is 16.

In June of 2010, the state legislature amended the sex registry statute to require registration for any federal or out-of-state conviction for an offense that would require registration if residing in the state of conviction. This change required Batson to register as a sex offender in Washington since he would have been required to register in Arizona. **In March of 2018, Batson was convicted of failure to register as a sex offender and he appealed his conviction.**

The Court of Appeals reversed Batson's sentence, holding that RCW 9A.44.128 (10)(h) was an unconstitutional delegation of legislative power to the State of Arizona to decide whether Batson had a duty to register in Washington. **The State appealed and the Supreme Court granted review.**

Training Takeaway

Under RCW 9A.44.130, Washington requires individuals convicted of sex offenses to register as sex offenders. The legislature defines "sex offense" broadly to include convictions from other jurisdictions: federal, military, foreign county, or tribal, and also includes convictions from other states:

Any out-of-state conviction for an offense for which the person would be required to register as a sex offender while residing in the state of conviction; or if not required to register in the state of conviction, an offense that under the law of this state would be classified as a sex offense under this subsection. RCW 9A.44.128 (10)(h) – Definitions applicable to RCW 9A.44.130 through 9A.44.145, 10.01.200, 43.43.540, 70.48.470, and 72.09.330.

Although Batson contended that RCW 9A.44.128 (10)(h) was an unconstitutional delegation of legislative power, statues are presumed constitutional. The Washington Constitution vests legislative authority in the state legislature, and it is unconstitutional for the legislature to abdicate or transfer its legislative function to others. It is a function of the legislature to define the element of a specific crime. Batson specifically argues that by requiring him to register, the legislature has abdicated its duty to define the elements of a crime to the ever-shifting laws of other states.

The Supreme Court found otherwise and reasoned that the legislature had not permitted the State of Arizona to define criminal conduct or the elements of a crime in the State of Washington. RCW 9A.44.132 states that it is a crime to knowingly fail to comply with applicable sex offender registration requirements. To convict a person of this crime, a jury must find that:

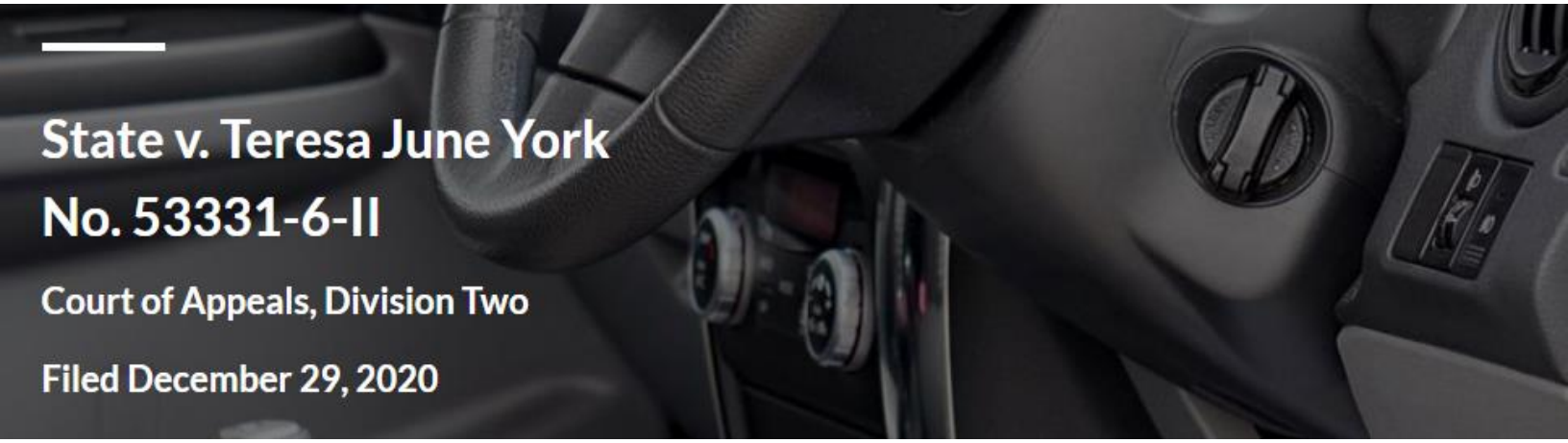
1. the person as a prior conviction for a sex offense,
2. the prior conviction triggered Washington's sex offender registration requirements, and
3. the person knowingly failed to comply with those requirements.

"Sex offense" is not an element of RCW 9A.44.132, but rather a definitional term. **A definition is not an element of the crime simply because it clarifies the meaning of an essential element.** Here, RCW 9A.44.128 (10)(h) merely sets the circumstances under which the obligation to register as a sex offender becomes operative. Once those obligations are triggered, a Washington criminal offense only occurs when a person knowingly fails to comply with them. The legislature may condition the operative effect of a statute upon the happening on a future specified event. The legislature expressly designed RCW 9A.44.128 (10)(h) to address a "future specified event."

The legislative testimony supporting the change stated that the amendment in 2010, defining sex offense in part as any federal or out-of-state conviction…for which the person would be required to register as a sex offender while residing in the state of conviction, was to fix the uncertainty of whether or not an out-of-state offense was comparable. With that uncertainly, which required a great deal of analyzing an out-of-state offense to determine its comparability by law enforcement, prosecutors, and courts, the previous registration law was confusing for all involved and created issues with the law being applied inconsistently. The amendment brought uniformity to Washington law, allowing law enforcement and citizens to better understand sex offender registration requirements, and prevented sex offenders from avoiding existing registration requirements in their states by moving to Washington state.

The definitional statute does not change how Washington sex offender registration requirements apply and it does not affect the elements of the crime of failure to register as a sex offender in Washington. Rather, if affects only the underlying condition of whether sex offender registration requirements are operative – when a person has a prior out-of-state conviction for which the person would be required to register as a sex offender while residing in the state of conviction. **Therefore, it is not an unconstitutional delegation of legislative authority and the decision of the Court of Appeals was reversed.**

External Link: www.courts.wa.gov/opinions/pdf/976171.pdf



State v. Teresa June York

No. 53331-6-II

Court of Appeals, Division Two

Filed December 29, 2020

Facts Summary

At approximately 1:30 a.m., an officer with the Firecrest Police Department was on patrol in a residential area, which did not contain any businesses. The officer had 12 years with the department and had patrolled the neighborhood many times before during his career. The officer noticed a Cadillac stopped on the wrong side of the road, facing south in the northbound lane, with its headlights on and the engine running. The vehicle was blocking in such a way that someone driving along the road would have to travel into the opposite lane to avoid the vehicle.

The officer noted another vehicle, a Suzuki, parked on the side of the road about 30 feet away from the Cadillac, facing the opposite direction. The vehicles were not parked in a way that indicated that the vehicles were set up for an attempted jump start.

Based on his experience in the area where car prowls were common at that time of day, the officer immediately became concerned that there was a car prowl in progress. When the officer pulled up in his marked patrol vehicle, a man quickly exited the driver's side of the Suzuki, walked to the passenger side of the Cadillac, and attempted to enter hurriedly, but the door was locked. Teresa York was sitting in the driver's seat of the Cadillac. Based on the officer's observations and experience, he believed that the male was prowling vehicles and York was waiting in the Cadillac as the getaway driver.

The officer did not observe the man with any tools or any damage on the Suzuki, but in his experience, the majority of car prowls in that area involved cars that were inadvertently left unlocked.

The officer made contact with the male and York and they both stated that the Suzuki stopped in that location earlier in the day and they had returned to jumpstart the car. The vehicle positions were not consistent with this explanation. A search located an active warrant for York's arrest for third degree theft and she was arrested on that warrant. In a search incident to arrest during booking, the booking officer discovered methamphetamine on York. York was subsequently charged with one count of unlawful possession of a controlled substance. York argued that her seizure was unlawful because the officer lacked reasonable suspicion sufficient to justify the detention and moved to suppress the methamphetamine evidence that was obtained following her arrest.

The officer testified as outlined above at a CrR 3.6 hearing and the trial court found the officer's testimony credible. No other witnesses were presented at the hearing and the court denied York's motion to suppress. Following the denial, York waived her right to a jury trial and the case proceeded to a bench trial where York was found guilty. York appealed.

Training Takeaway

Under the Fourth Amendment to the United States Constitution and Article I, Section 7 of the Washington Constitution, an officer may not seize a person without a warrant unless a carefully drawn exception to the warrant requirement applies. A Terry detention is one such exception. Under Terry, an officer may briefly detain a person for questioning without a warrant if the officer has reasonable suspicion that the person is or is about to be engaged in criminal activity. Reasonable suspicion of criminal activity must be based on specific and articulable facts known to the officer at the inception of the stop and be individualized to the person subject to the detention.

Courts consider the totality of the circumstances known to the officer in evaluating the reasonableness of the officer's suspicion. The totality of the circumstances includes the officer's training and experience, the location of the stop, the conduct of the person being detained, the purpose of the stop, and the amount of physical intrusion on the suspect's liberty. A valid Terry stop must be limited in scope and duration to fulfilling the investigative purpose of the stop. York challenged the adequacy of the officer's justification in detaining her, asserting that her conduct was innocuous and, therefore, the officer lacked reasonable suspicion that she was engaged in criminal activity.

York specifically argued that the male had done nothing to warrant suspicion – he was not in possession of burglary tools or stolen property, there were no reports of vehicle prowls in the area, and there were no signs of damage or forced entry into either vehicle. York further argued that neither she nor the male made any furtive movement and the explanation they gave was plausible. York argued using cases where courts had found insufficient fact to warrant detention. The Court of Appeals did not agree with York's minimization of her conduct. In the other cases, one involved the stop of a moving vehicle where the driver had done nothing suspicious and the other involved circumstances that were generally suspicious, but amounted to no more than a hunch that the person detained was involved in criminal or drug activity.

In this case, York was not merely stopped on a public street, but was in a residential neighborhood late at night in the driver's seat of a vehicle stopped in the road, facing the opposite direction of oncoming traffic. York's position 30 feet from the Suzuki rendered it unlikely that she was there to assist the car with a jumpstart or repair. The officer's 12 years of experience patrolling that particular area gave him knowledge that car prowls occur with regular frequency in the neighborhood at that time of night. It was further not uncommon for two individuals to work together in executing a car prowl and the officer observed that York's vehicle was situated in a manner that would make for a quick getaway if needed. The totality of the circumstances demonstrated that the officer had a reasonable suspicion that York was

engaged in an ongoing car prowl.

External Link*: www.courts.wa.gov/opinions/pdf/

***NOTE:** The URL to this opinion does not take you to the original Dec 2020 opinion. Instead it's the May 2021 unpublished opinion that vacates the original conviction for possession. The court held: *"After this court filed its opinion but before the mandate terminating review was entered, the Washington Supreme Court held that RCW 69.50.4013 violated the due process clauses of the state and federal constitutions and is void. State v. Blake, 197Wn.2d 170, 195, 481 P.3d 521 (2021). 1 Terry v. Ohio, 392 U.S. 1, 30, 88 S. Ct. 1868, 20 L. Ed. 2d 889 (1968). Filed Washington State Court of Appeals Division Two May 4, 2021 No. 53331-6-II 2 York moved for reconsideration of this court's opinion arguing, in light of Blake, that this court should reconsider its decision and vacate her unlawful possession of a controlled substance conviction. The State responded to York's motion and concedes that York is entitled to vacation of her conviction. Accordingly, we remand with instructions to vacate and dismiss with prejudice York's unlawful possession of a controlled substance, methamphetamine conviction."*

As of December 2020, LE relied on "good law" related to possession of a controlled substance, so we believe the training remains relevant. We will cover the changes to the law (and its retroactivity) in the subsequent decision in Blake in the upcoming April 2021 LED.

State v. Michael Patrick Cargill

No. 36140-3-III

Court of Appeals, Division Three

Filed December 15, 2020

Facts Summary

It was reported to police that a shop had been broken into and a pickup truck and dirt bike were stolen. Police recovered the stolen pickup truck and received a tip about the location of the missing dirt bike. While following up on the tip, the investigating officer discovered Michael Cargill working on the dirt bike. Cargill was arrested and a search at the jail uncovered methamphetamine and shaved car keys.

Cargill was interviewed in the patrol car and he claimed that an unknown person had brought the dirt bike to the house. The officer told Cargill that he was acting deceptive and not being honest with him. Cargill then admitted that his brother stole the bike and delivered it to him. Cargill stated that he initially lied in order to protect his brother.

Cargill testified at trial that he did not know that the bike was stolen, and he had believed that the bike belonged to a friend. Cargill also admitted that he knew his brother had stored stolen property at the house, but that he had told the officer that there was no other stolen property present, which was not true. Cargill admitted to being deceptive with the officer.

The jury found Cargill guilty of three counts, which included possession of a stolen motor vehicle, and he appealed. On appeal, Cargill challenged whether or not the dirt bike qualified as a motor vehicle.

The case was delayed while this issue was litigated in the Supreme Court as there were differing views on this issue in various cases in Washington. At issue was whether a dirt bike, a form of motorcycle designed primarily for off-road use, was a "motor vehicle" within the meaning of the possession of a stolen motor vehicle statute – RCW 9A.56.068. **While the statute makes it a crime to possess "a stolen motor vehicle," the statute does not define the word "motor vehicle." An oversight has led to extensive litigation and varying results.**

Training Takeaway

Cargill argued that because a dirt bike cannot be legally driven on the roadways of Washington, it cannot constitute a "motor vehicle." The State argued that the dirt bike at issue fit the definition of "motorcycle" found in the traffic code, noting that motorcycles are expressly defined as motor vehicles per RCW 46.04.330. At issue in the main case before the Supreme Court was whether a snowmobile was a "motor vehicle." Utilizing the definitions of vehicle and motor vehicle from the traffic code, the court came up with the working definition of a motor vehicle to be:

> **A self-propelled device that is capable of moving and transporting people or property on a public highway.**

The court then applied a two-step process – is the device in question self-propelled and is it capable of moving people or property on the roadway? The court concluded that a snowmobile was a self-propelled device under the traffic code. The remaining question was whether the snowmobile was capable of moving and transporting people on a public highway. It was determined that because the traffic code permits snowmobiles on a public highway under certain circumstances, a snowmobile is a motor vehicle.

The parties in the case at hand agree that a dirt bike is self-propelled with the disagreement being over the authorization of dirt bikes to be on public highways. The Court of Appeals found that dirt bikes are also legally authorized to be on public highways in some circumstances per RCW 46.61.705(1). The court found that not only

are dirt bikes motorcycles, which are already classified as motor vehicles, but they are designed to convey humans on hard surfaces such as dirt or concrete. Dirt bikes are certainly capable of carrying people on public highways and legally authorized on roadways at times so a dirt bike is a motor vehicle.

The court confirmed Cargill's conviction for possession of a stolen motor vehicle.

External Link: www.courts.wa.gov/opinions/pdf/361403_unp.pdf

State v. David Raymond Mullins
No. 36699-5-III

Court of Appeals, Division Three

Filed December 3, 2020

Facts Summary

Colville Police arrested David Mullins on the basis of two outstanding arrest warrants and probable cause that he was engaged in vehicle theft. Mullins was transported to the County Jail and he was taken to Interview Room 1 in the booking area. Officers were unable to book Mullins immediately because deputies were feeding and providing medications to other inmates. Mullins was secured in the interview room and provided with a meal while officers were taking care of those other duties.

Shortly thereafter, Mullins was observed coming down a stairwell and he was taken back to the interview room where he was once against secured in the room. Once again, Mullins was able to open the door and leave. He was again apprehended in the building and found to be in possession of personal items belonging to one of the jailers. Mullins was charged with one count of first-degree escape based on escaping custody while being detained on a forgery conviction, which was still awaiting sentencing at the time.

Mullins was convicted of first-degree escape based on a finding that, while he was not an inmate of the jail, he had escaped the custody of corrections officers by leaving a secured room where he had been confined. Mullins appealed.

Training Takeaway

Mullins argued that because he never left the jail building, there was insufficient evidence that he escaped "custody" or that he escaped from a "detention facility." A person commits first degree escape if he "knowingly escapes from custody or a detention facility while being detained pursuant to a conviction of a felony." RCW

9A.76.110(1). The term "custody" is defined as "restraint pursuant to a lawful arrest or an order of a court, or any period of service." "Restraint" means "an act of restraining, hindering, checking, or holding back from some activity or expression" or a "means, force, or agency that restrains, checks free activity, or otherwise controls."

Mullins specifically argued that because he never left the building, he both remained in the detention facility and remained in custody with only his location within the building having changed. Mullins was charged with escaping custody, not escaping from the detention facility, so the only question was whether he escaped custody when he repeatedly removed himself from the locked interview room in which corrections staff had attempted to secure him prior to his booking into the jail.

Because Mullins was not where he was supposed to be, he was outside the "custody" of the corrections staff when he escaped the restraint of the conference room in which he had been placed. Mullins was restrained in the physical custody of the officers due to placement in the secured room and he escaped their custody when he freed himself from that location. Mullins was no longer "restrained" where he had been placed, therefore, the evidence supported his conviction.

External Link: www.courts.wa.gov/opinions/pdf/366995_unp.pdf
