

# LAW ENFORCEMENT DIGEST – February 2021



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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.

## TOPIC INDEX

- Simple Possession of Drugs - The “Blake Effect”
- Felony Bar Statute – Use of Lethal Force
- Mens Rea (mental state)

## CASES

1. State v. Blake, No. 96873-0 (Feb. 25, 2021)
2. Davis v. King County, COA No. 79696-8-I (Feb. 1, 2021)
3. Watness v. City of Seattle, COA No. 79480-9-I (Feb. 16, 2021)

## 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?

- Please contact your training officer if you need to have this training reassigned to you.
- If you have questions/issues relating to using the ACADIS portal, please review the [FAQ site](#).
- Send Technical Questions to [lms@cjtc.wa.gov](mailto:lms@cjtc.wa.gov) or use our [Support Portal](#).
- Author: Linda J. Hiemer, JD| Legal Education Consultant

## Facts Summary

### TOPIC: Simple Possession of Drugs and Mens Rea

In 2016, police executed a search warrant in Spokane, Washington, seeking evidence of stolen vehicles. They arrested three people on the property, including Shannon Blake. At the jail, a corrections officer discovered a small baggy containing methamphetamine in the coin pocket of Blake’s jeans. The State charged Blake with possession of a controlled substance in violation of Washington’s strict liability drug possession statute, [RCW 69.50.4013](#) (referred to throughout as the “Statute”), makes possession of a controlled substance a felony punishable by up to five years in prison, plus a hefty fine

At trial, Blake relied on the judicially created affirmative defense of “unwitting possession.” She testified that a friend had bought the jeans secondhand and given them to Blake two days before Blake’s arrest. Blake said she had never used methamphetamine and did not know the jeans had drugs in the pocket. She acknowledged that the drugs had been “on [her]” on the day of her arrest. Blake’s boyfriend also testified that Blake did not use drugs and that she had received the jeans from a friend.

The trial court served as trier of fact. It found that Blake had possessed methamphetamine on the day in question. Consistent with the Statute and prior case law applying the Statute, it did not make any findings as to whether the State had proved that Blake’s possession was intentional or knowing. It did conclude, however, that Blake had not met her burden to prove that her possession was unwitting. Accordingly, the trial court found Blake guilty.

On appeal, Blake argued that requiring her to prove unwitting possession to the charged offense violated due process. The Court of Appeals held that the crime of possession of a controlled substance did not require a mens rea (mental state) element, and the defense's burden to show unwitting possession did not violate due process. Upon review of the decision of the Court of Appeals, the Washington Supreme Court disagreed. The Supreme Court ruled the Statute violated the due process clauses of the Washington state and U.S. constitutions and exceeded the legislature's police powers. Therefore, the court reversed the decision of the Court of Appeals and vacated Blake's conviction.

## **Training Takeaway**

The simple drug possession statute at issue stated, "It is unlawful for any person to possess a controlled substance unless the substance was obtained directly from, or pursuant to, a valid prescription or order of a practitioner while acting in the course of his or her professional practice, or except as otherwise authorized by this chapter." Under the Statute, the State did not need to prove any mens rea (mental state) element to secure a conviction for this crime which was a Class C Felony. That made is a "strict liability" statute.

"Strict liability" is a form of liability under criminal or civil ("tort") law that does not require any intent, knowledge, or proof of mens rea (mental state). Regardless of a person's intent or lack of intent to harm or commit a crime, a person can still be held strictly liable.

For example, in the case of statutory rape, the accused need not have knowledge of the age of the victim or intent to commit a crime. A person is strictly liable for statutory rape based on the age of the victim, not the intent of the perpetrator. Similarly, the Statute for simple possession, by excluding any element of knowledge or intent to possess resulted in strict liability felony drug possession. However, where statutory rape and simple possession differed is some conduct or action.

In the matter of statutory rape, the perpetrator may not have criminal intent but must engage in conduct or action (sexual contact with a person under the statutory age of consent). Conversely, the Statute did not require any conduct or action to be strictly liable for drug possession. While one could argue, “possessing drugs” is conduct and action, the facts of this case demonstrated that someone could unknowingly be in possession of drugs simply by wearing a pair of newly acquired jeans. In this case, the State did not prove that Blake did anything except wear jeans that had pockets. The Court noted that valid strict liability crimes require that the defendant perform some conduct. Blake did not. Under the due process clauses of the state and federal constitutions, the Court held that the legislature may not criminalize such nonconduct.

The Court clarified that active trafficking in drugs was distinguishable as it was not innocent conduct and recognized that states nationwide had criminalized knowing drug possession, except for Washington. It added that the legislature has constitutional authority to regulate drugs through criminal and civil statutes. But the Court cautioned that the Statute did far more than regulate drugs and that it was the only drug possession statute in the nation criminalizing entirely innocent, unknowing possession.

To point out the potential impact of the omission of a mens rea requirement, the Court provided a few examples to include:

- a letter carrier who delivers a package containing unprescribed Adderall;
- a roommate who is unaware that the person who shares his apartment has hidden illegal drugs in the common areas of the home; or
- a mother who carries a prescription pill bottle in her purse, unaware that the pills have been substituted for illegally obtained drugs by her teenage daughter, who placed them in the bottle to avoid detection.

The Court reasoned that the state legislature’s exercise of its otherwise plenary police power to criminalize entirely passive and innocent nonconduct with no mens rea or guilty mind violated the due process clause of the state and federal constitutions and fell outside the State’s police power to criminalize.

In prior cases, prosecutors and the Court had made efforts essentially to work around the strict liability of the Statute by creating an affirmative defense to the crime. The defendant could assert “unwitting possession” as an affirmative defense to mitigate the crime. But, instead of the traditional requirement that the state prove every element of a crime including the mens rea or requisite intent, the burden was placed on the defendant to assert “unwitting.”

The Court held that this judicially created affirmative defense had no legitimate place in its analysis of whether the statute that the legislature drafted and enacted exceeded its police powers. The Court noted that it generally interpreted statutes to avoid constitutional doubt or difficulties when the interpretation was consistent with the legislative intent. In many cases, these statutory interpretation rules have led the United States Supreme Court and the Washington Supreme Court to read mens rea elements into statutes where the legislature omitted them.

However, the Court added that the legislature “‘is presumed to be aware of judicial interpretation of its enactments,’ and where statutory language remains unchanged after a court decision the court will not overrule clear precedent interpreting the same statutory language.” The Court emphasized that the legislature had 40 years to review court decisions and amend the Statute to add the mens rea element but failed to do.

To clarify, the Statute did not violate the due process clause solely because it was a strict liability crime. Instead, the simple possession statute violated the due process clause because it criminalized wholly innocent and passive nonconduct on a strict liability basis. Therefore, the Court ruled that the Statute was unconstitutional and invalid.

**NOTE: The impact of the Blake decision cannot be understated and is beyond the scope of this LED. Rather, the case summary is presented to understand more fully the reasoning behind the Court’s decision.**

The unconstitutionality of the Statute means all current and prior convictions under the Statute are invalid and void. While legal and judicial scholars and commentators can and will wrestle with the court's opinion and legislators will scramble to introduce bills to amend, law enforcement, including corrections, must act in real time.

At the most basic level, this case demonstrates the separation of powers and check and balances in our legal system in action. The legislative branch enacts laws (statutes), the judicial branch interprets the laws, and the executive branch enforces the laws. When one branch falls short, as here where the legislature failed to include a mens rea as a required element for a felony (and Washington state was the only state to not require knowledge or mental state in its felony possession statute), the judicial branch stepped in and declared the statute unconstitutional.

Here's an example of how King County is addressing the Blake Effect (offered only for illustration purposes):

<https://kingcounty.gov/depts/prosecutor/criminal-overview/blake.aspx>

**Please contact your immediate supervisor, legal advisor, and other resources to remain current on the impact of Blake to your department and duties.**

EXTERNAL LINK: <https://www.courts.wa.gov/opinions/>

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Davis v. King County

COA No. 79696-8-1

Washington Court of Appeals, Division I

February 1, 2021

## Facts Summary

TOPIC: Felony Bar Statute and Mens Rea

On October 21, 2016, Molina approached King County Sheriff's Office Deputy Pritchett during his patrol shift. Molina was worried about his girlfriend, Davis, who had been sending him concerning text messages. Davis had a history of psychiatric treatment for mental illness and history of attempted suicide. One text said: *"[w]ell come and get the girls or call 911 I'm going to shoot myself."* Davis also texted a blurry photo that she implied was a self-inflicted wound. It was unclear from the photo the severity and location of the potential injury.

Molina sought out Deputy Pritchett's help because Davis had two of her three children with her and was also pregnant with a fourth child. Pritchett was familiar with both Davis and Molina because he had responded to domestic violence incidents at Davis's home before. Molina showed Pritchett the text messages from Davis. Molina told Pritchett that Davis had access to a rifle and a handgun.

Pritchett advised dispatch of a suicidal female, possibly armed with a rifle and who has her two children with her. He said that he would conduct a welfare check. Dispatch advised Pritchett that backup was approximately 26 minutes away. At the same time, Deputy Lewis was commuting home when he overheard Pritchett's radio transmissions and responded. They parked a few blocks from Davis's home.



Together, the deputies approached Davis's house on foot. Neither heard any noise from the house or indication that the occupants were in distress. Both deputies loudly knocked on the front door, siding, and windows of the house. They repeatedly yelled "*Sheriff's Office!*" "*It's the police!*" and "*Come to the door!*" to get Davis's attention. Lewis saw Davis's two children in the living room and asked them to open the front door. Davis's three-year-old child complied.

The deputies entered the home, Lewis had his weapon drawn. Lewis asked the children "*Where's mommy's room?*" and one of the children pointed to a door down the hallway. The deputies entered Davis's bedroom and observed her lying in her bed, covered in a blanket up to her neck, staring blankly at the door. The deputies instructed Davis to show her hands. Davis did not respond. Lewis pointed his weapon at Davis while Pritchett pulled the blanket off Davis. Both deputies testified that they saw a gun.

Both deputies observed a gun in or near Davis's right hand and a magazine in her left hand but could not tell whether the gun was loaded. Lewis ordered Davis to "*drop the gun,*" while Pritchett yelled "*gun.*" Both officers testified that Davis raised the gun and pointed it directly at them—apparently at the same time. Both Lewis and Pritchett fired their weapons. Three bullets hit Davis.

Pritchett announced "*shots fired*" over the air. Davis slumped over, fell off the bed, and stated "*It's not even loaded.*" Lewis heard the children screaming and left Pritchett alone in the bedroom with Davis.

Auburn Police Officer, Pederson, arrived. After removing the children from the home, Pederson and Lewis went back to Davis's bedroom. According to Pederson, he saw the gun in Davis's hand while she was lying on the floor, and one of the deputies took it out of her hand. Pritchett testified that he told Lewis that they needed to make the scene safe and asked Lewis to cover him while he got the gun.

Pritchett claimed he recovered the gun from the bed, checked it, and confirmed that it did not have a magazine nor round in the chamber. He then put the gun in his belt. Lewis testified that he was watching Davis and did not see Pritchett remove the gun from the bed.

Fire department medics, who had been waiting outside, performed lifesaving measures, but Davis died at the scene.

On January 3, 2018, the Estate of Davis filed a wrongful death action against King County and Deputies Pritchett and Lewis (collectively King County) for negligence, battery, negligent use of excessive force, and outrage. King County moved for summary judgment to dismiss all of the estate's claims based, in part, on the felony bar statute, that the deputies had no legal duty to Davis, that the deputies' actions were intentional, justified, and reasonable because the deputies were justified in using deadly force when confronted with a deadly threat.

King County filed a Motion for Summary Judgment, which is a motion requesting judgment in the moving party's favor without the need for a trial (by judge or jury) on the grounds that no genuine issue of material fact exists and the party filing the motion is, therefore, entitled to judgment as a matter of law. The trial court granted summary judgment in favor of the defendants, King County. The Estate appealed the trial court's granting of summary judgment based on the felony bar statute arguing that questions of material fact existed whether Davis had the necessary specific intent to commit a felony assault. The Court of Appeals agreed with the Estate and reversed the trial court's award of summary judgment on the grounds that genuine issues of material fact existed that should be decided by a trier of fact at trial.

## Training Takeaway

The felony bar statute, also referred to as the felony defense statute, creates a complete defense or bar to any action for damages for personal injury or wrongful death if:

- the person injured or killed was engaged in the commission of a felony at the time of the injury or death and
- the felony was a proximate cause of the injury or death. See [RCW 4.24.420](#)

Summary Judgment should be denied when there are questions of material fact over whether the person injured or killed had the ability to form the necessary mens rea (mental state) to commit the felony.

King County asserted that Davis was engaged in assault at the time she was killed. [RCW 9A.36.021](#)(1) However, “assault” is not defined in the criminal code, so the Court resorted to common law definitions. Common law is the law that arises from court opinions (cases), not from statutes or regulations enacted by the legislature. Under Washington common law, specific intent to cause bodily harm or to create apprehension bodily harm is a necessary element of assault. The known or expected result must also be the person’s objective or purpose. Where there is no direct evidence, intent can be inferred from circumstantial evidence. A jury may infer criminal intent from a defendant’s conduct where it is plainly indicated as a matter of logical probability.

Intent is a question of fact, normally reserved for the jury. In granting summary judgment, the trial court relied on the testimony of Deputies Pritchett and Lewis, that Davis pointed a weapon at them, to infer her intent to commit felony assault. The Court ruled that the trial court’s reliance on that testimony was error. The Court noted that the evidence raised numerous questions of fact over whether Davis intended to commit an assault.

This evidence included:

- Davis’s history of mental illness and attempted suicide,
- the deputies’ conflicting testimony about where the gun and clip were located,
- their testimony that she pointed the gun at each of them—apparently at the same time,
- Davis’s dying statement that “It’s not even loaded,”
- and the conflicting testimony whether the gun was found in Davis’s hand, on the floor, or still on the bed.

The Court observed that while a jury might find the testimony of the deputies credible and Davis’s act of pointing the gun demonstrated her intent to commit an assault, it might also conclude to the contrary. The trial court erred in concluding Davis had the requisite specific intent to commit assault. It was, instead, a question of fact to be decided by a jury. Therefore, the Court reversed the trial court’s granting of summary judgment in favor of King County and remanded back to the trial court for further proceedings.

EXTERNAL LINK: <https://www.courts.wa.gov/opinions/>

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## Facts Summary

TOPIC: Felony Bar Statute – Use of Lethal Force and Mens Rea

On June 5, 2017, SPD responded to a call from Charleena Lyles in which she reported she had been the victim of domestic violence at her apartment. In the six months prior, Lyles called the Seattle Police Department (SPD) twenty-three times. Police reports indicated that while officers were in her apartment, Lyles—who was present with her young daughter—“armed herself with a pair of extra-long metal shears and was threatening [responding] officers.” Lyles reportedly told officers, “*Ain’t none of y’all leaving here today.*” Both officers present drew their firearms and commanded her to drop the scissors to the floor. Lyles reportedly yelled, “[A]re you going to shoot me in front of my daughter?” The police reported that Lyles refused to put down the shears even after being repeatedly asked to do so. They told Lyles they were there to help her, not to shoot her.

Additional police officers responded to the scene and reported that during this incident, Lyles made several unusual comments, including wanting to “morph into a wolf” and talking about “cloning her daughter.” The police described Lyles making several “unusual religious comments” and accusing the officers of being “devils” and members of the Ku Klux Klan.

Officers were ultimately able to convince Lyles to take a seat on her sofa and to drop the scissors. The police learned from Lyles’s sister that Lyles had experienced “a recent sudden and rapid decline in her mental health.” The police report described Lyles as exhibiting “disorientation/confusion,” “disorganized speech/communication,” “disorderly/disruptive behavior,” and

“bizarre, unusual behavior.” The incident led the officers to flag Lyles and her address with an “officer safety caution.” The police booked Lyles into jail for harassment but recommended her case be transferred to mental health court.

On the morning of June 18, 2017, Lyles called 911 to report a residential burglary. Seattle Police Officer Jason Anderson, on routine patrol, responded to the call and conducted a routine record check on the address. After Officer Anderson noted the officer safety caution associated with Lyles and reviewed the police report of the June 5 incident, he requested back up from another unit.

When Officer McNew arrived, the two officers briefly discussed the prior incident. Officer McNew commented they should not let Lyles get behind them or get between the officers and her apartment door. When the Officers contacted Lyles in her apartment, she was calm and cooperative. She led the Officers down a hall to a back bedroom from which she reported items had been stolen.

After returning to the kitchen, Officer Anderson asked Lyles to clarify some information for his report. He glanced up and saw Lyles lunge at him with a knife. He drew his firearm and told Lyles to get back. Officer Anderson testified Lyles was yelling at them, but he could not make out what she was saying. Officer Anderson testified Lyles then turned her attention toward Officer McNew, who was then cornered in her kitchen. Officer McNew asked Officer Anderson to use his stun gun. Officer Anderson responded that he did not have his stun gun.

The Officers both testified that Lyles continued to approach them, knife in hand, ignoring their commands to get back. Believing Lyles intended to stab one of them, both Officers repeatedly fired at Lyles, killing her.

The Estate sued alleging common law negligence and assault. The City and Officers moved for summary judgment, principally arguing the Officers were immune from suit under Washington’s felony defense statute, [RCW 4.24.420](#).

The trial court granted the Officers' summary judgment motion. The Estate appealed. The Washington Court of Appeals granted the Estate's appeal, reversed the trial court's granting of summary judgment in favor of Seattle and the Officers and remanded the case back to the trial court for further proceedings.

## **Training Takeaway**

The Felony Bar Statute, [RCW 4.24.420](#), provides: It is a complete defense to any action for damages for personal injury or wrongful death that the person injured or killed was engaged in the commission of a felony at the time of the occurrence causing the injury or death and the felony was a proximate cause of the injury or death. The Statute requires proof that the person killed was engaged in the commission of a felony at the time of her death.

The Officers alleged that Lyles was engaged in the commission of a felony because her conduct constituted first degree assault with a deadly weapon under RCW 9A.36.011(1). Assault with a deadly weapon requires proof that a person, with the intent to inflict great bodily harm, assaulted another with a deadly weapon. The Court held that, to benefit from complete immunity under RCW 4.24.420, the Officers were required to prove that Lyles formed the specific intent either to inflict great bodily harm or to cause death. The Officers argued they had no burden of proving any specific mens rea. The Court of Appeals disagreed and relied on its decision in *Davis v. King County*, No. 79696-8-I (Wash. Ct. App. Feb 1, 2021) – a case also presented in this LED.

The Court reasoned that if a jury were to find that Lyles suffered from a mental disorder that rendered her unable to form the mens rea of a felony, then the jury could conclude the Officers failed to prove she was engaged in the “commission of a felony” and they would not be entitled to statutory immunity under RCW 4.24.420.

The Court added that the Officers presented evidence that Lyles committed at least felony assault. They both testified she lunged at them with a knife while making threatening statements. Although the Officers may have no direct evidence of Lyles's intent, a jury may infer it from this circumstantial evidence. The Estate, however, presented evidence that Lyles was suffering from a psychosis at the time of the shooting that impaired her ability to form this mens rea. The police reports of the June 5, 2017 incident described Lyles as disoriented, delusional, experiencing hallucinations, and exhibiting impaired judgment. The Officers testified that Lyles's conduct swung rapidly from coherent to aggressive without warning on June 18. All the evidence created genuine issues of material fact for a jury to consider.

The Court recognized that the Officers had to prove each element of the alleged felony in order to be fully immune under the felony bar statute, including intent, and evidence of Lyles's incapacity to form intent to commit felony assault or attempted murder at the time of her shooting related directly to an element of proof the felony bar statute. The evidence of Lyles's psychological condition on the day of her death created a genuine issue of material fact as to whether she had the capacity to form the requisite intent to commit felony assault or attempted murder, and the Court of Appeals ruled the trial court erred in granting summary judgment on this issue.

The Court determined that officers owe a legal duty to exercise reasonable care when engaging in affirmative conduct toward others, whether they be crime victims or individuals suspected of committing crimes. Whether the use of lethal force against a person who, after requesting the officers' presence to investigate a burglary, purportedly assaulted the officers with a knife is a question for the trier of fact requiring a trial, not summary judgment.



Therefore, Washington’s felony defense statute, RCW 4.24.420, did not provide complete immunity to the officers permitting automatic summary judgment, as there was a question of fact as to whether the decedent, who suffered from a mental illness, formed the specific mens rea for assault. The decedent’s expert’s “psychological autopsy” should have been admitted by the trial court and was sufficient to create a question of fact as to the decedent’s mens rea.

The officers were not entitled to qualified immunity on a summary judgment basis as there were genuine questions of material fact as to whether the officers followed the proper procedures in responding to the knife attack and whether both officers acted reasonably in using lethal force against the decedent. Genuine issues of material fact require the jury to decide whether the decedent assumed the risk that she would be shot when she attacked the officers with a knife. So, the court reversed the lower court’s granting of summary judgment in favor of the officers and remanded the case back to the trial court.

**i** NOTE: The Court of Appeals did not decide that the officers use of lethal force was inappropriate nor did it decide that the officers would not ultimately be immune from liability. Instead, it recognized that genuine issues of fact existed for which a trial was appropriate. It was necessary for a jury to hear the evidence.

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