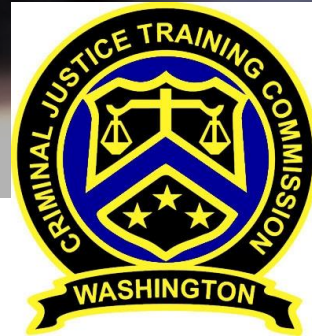


LAW ENFORCEMENT DIGEST

February 2022



COVERING CASES PUBLISHED IN FEBRUARY 2022

This information is for REVIEW only. If you wish to take this course for CREDIT toward your 24 hours of in-service training, please contact your training officer. They can assign this course in Acadis.

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

- EXCLUDING A VICTIM'S TOXICOLOGY REPORT DOES NOT VIOLATE A DEFENDANT'S CONSTITUTIONAL RIGHT TO PRESENT A DEFENSE
- ANIMAL ABUSE CAN CONSTITUTE A CRIME OF DOMESTIC VIOLENCE
- RULES AGAINST POLICE OPINION TESTIMONY

CASES

1. State v. Jennings, 99337-8 (February 3, 2022)
2. State v. Abdi-Issa, 99581-8 (February 17, 2022)
3. State v. Putman, 81621-7-I (February 22, 2022)

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 [\[2018-2021\]](#) | [\[2022\]](#)

QUESTIONS?

- Please contact your training officer if you want this training assigned 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 or use our [Support Portal](#).
- Author: Linda J. Hiemer, JD | Program Administration Manager Legal Education Consultant/Trainer



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.

A stack of books with several colorful sticky tabs (yellow, pink, green, purple) protruding from the pages. The books are slightly out of focus, creating a sense of depth.

State v. Jennings

No. 99337-8

SUPREME COURT OF WASHINGTON

February 3, 2022

Facts Summary

TOPIC: EXCLUDING A VICTIM’S TOXICOLOGY REPORT DOES NOT VIOLATE A DEFENDANT’S CONSTITUTIONAL RIGHT TO PRESENT A DEFENSE

Jennings and his friend Redman went to retrieve Redman’s car from a mobile home that Redman had recently moved out of. When they arrived, they asked Tongedahl and Burton, who were working on a car in the front yard, where Redman’s car was. While Redman had his gun pulled out, Redman directed Burton and Jennings to enter a mobile home. While inside, they argued over the car’s location. Jennings claimed that both Redman and Burton appeared to be high on methamphetamine. During the argument, Jennings sprayed bear mace and struck both Redman and Burton and caused them to separate. In response, Burton took a step towards Jennings, and Jennings fired two shots at Burton. According to witness Duane, Jennings said “I got you dog,” before running away with Redman. Shortly thereafter, Burton died.

At trial, Jennings asserted that he acted in self-defense. In support of that defense, he sought to admit a toxicology report that revealed Burton had a high level of methamphetamine in his system. The court held the toxicology report inadmissible because it was irrelevant, prejudicial, and speculative. Jennings appealed, arguing the exclusion of the report violated his constitutional right to present a defense.

On appeal, the court affirmed the trial court’s ruling. Then, the Supreme Court affirmed the appellate court’s holding while clarifying the test that applies to a claimed constitutional violation of the right to present a defense.

Training Takeaway

To analyze whether a defendant's Sixth Amendment right to present a defense has been violated, the court first analyzes the trial court's evidentiary rulings for an abuse of discretion. If the evidentiary rulings did not constitute an abuse of discretion, the court considers whether the exclusion of evidence violated the defendant's right to present a defense. A trial court abuses its discretion if no reasonable person would take the view adopted by the trial court. If evidence is relevant and highly probative, it must come in.

Under the Washington Rules of Evidence (ER), relevant evidence is "evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." ER 401. In addition, ER 403 states that "[a]lthough relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence."

Consequently, relevant evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusing issues, or misleading the jury. Jennings argued that he acted out of self-defense because he reasonably believed Burton was high on methamphetamine and knew of the violent side-effects of the drug. Thus, he argued that the toxicology report was relevant to weighing the reasonableness of his fear.

However, the court ruled that the toxicology report would invite speculation and mislead the jury. It reasoned that due to the wide range of effects of methamphetamine on different people it is impossible for an expert to know how the drug might have affected the victim. The court stated that allowing the defendant, an unqualified expert, to express his opinion on how the methamphetamine affected the victim would be unfairly prejudicial and invite speculation by the jury as to how the drug might have affected the victim's behavior. Therefore, the Supreme Court held that the court did not abuse its discretion in excluding the toxicology report.

Further, the reviewing court must weigh the defendant's right to produce relevant evidence against the State's interest in limiting the prejudicial effects to determine whether excluding it violates the defendant's right to present a defense. The court relied on whether the

evidence was the defendant's entire defense and whether it was of such high probative value that no State interest would be compelling enough to exclude it.

The Court noted that Jennings was still able to testify about his subjective fear that Burton was high on methamphetamine. Thus, excluding the toxicology report did not eliminate Jennings' entire defense. The court concluded that given the State's interest in avoiding the prejudicial and speculative effect that the toxicology report might have on the fact-finding process, excluding the report did not deprive Jennings of his right to present a defense.

[EXTERNAL LINK: View the Court Document](#)

State v. Abdi-Issa

No. 99581-8

SUPREME COURT OF WASHINGTON

February 17, 2022



Facts Summary

TOPIC: ANIMAL ABUSE CAN CONSTITUTE A CRIME OF DOMESTIC VIOLENCE

Fairbanks began dating Abdi-Issa shortly after she moved to Seattle with her dog, Mona. Mona was a small Chihuahua and Dachshund mix. Fairbanks testified that she was close to Mona. However, Abdi-Issa had a history of disliking Mona. Abdi-Issa was abusive toward Fairbanks and Mona, even threatening to kill them both.

One evening, Abdi-Issa insisted Fairbanks let him take Mona on a walk. Fairbanks objected, but Abdi-Issa ignored her and left with Mona. Soon after, Abdi-Issa called Fairbanks claiming that Mona had gotten out of her harness and that he could not find her. Fairbanks did not believe him because Mona had never gotten out of her harness before, but Abdi-Issa refused to share more. Then, Fairbanks began panicking because she heard Mona yelping over the phone.

Around that same time, Ludin and Moe heard a sound of great distress. They followed the sound and saw Abdi-Issa beating and making brutal stabbing motions towards Mona. Also, they saw Abdi-Issa kick Mona so hard that she went up into the air and flew into the bushes. Ludin called the police.

When the Officers responded to Ludin's call, Ludin was hyperventilating and having a panic attack. Further, while one Officer talked to Abdi-Issa, the other Officer went to find Mona. With Ludin's help, the Officer found Mona alive, and she was transported to an emergency veterinary clinic.

Meanwhile, Fairbanks was frantically searching for Mona. During her search, she ran into the Officers, who realized that she was Mona's owner, and directed Fairbanks to the veterinary clinic. By the time Fairbanks arrived at the veterinary clinic Mona had died from multiple instances of blunt force trauma.

The court imposed the maximum 12-month sentence for the crime of animal cruelty, and an additional 6 months aggravator for impacting others. Also, based on a finding of domestic violence, the court imposed a no-contact order prohibiting Abdi-Issa from having contact with Fairbanks. On appeal, the court vacated the domestic violence designation, the no-contact order, and the impact on others sentencing aggravator. The Supreme Court of Washington reversed the appellate court's decision and remanded the case to the trial court.

Training Takeaway

First, the court concluded that animal cruelty could be designated as a crime of domestic violence. The Washington legislature passed the domestic violence act "to recognize the importance of domestic violence as a serious crime against society and to assure the victim of domestic violence the maximum protection from abuse which the law and those who enforce the law can provide." [RCW 10.99.010](#)

The domestic violence act, [RCW 10.99.020](#)(4)(b), allows certain crimes committed against an intimate partner to receive a domestic violence designation. Although animal cruelty is not listed as a crime under the domestic violence statute, the Court ruled it is sufficiently similar to the enumerated crimes. Thus, the trial court did not err in determining that, under these facts, the animal cruelty was domestic violence. Abdi-Issa argued that animal cruelty is not sufficiently similar to the enumerated crimes because it does not involve a human victim. However, they rejected his argument as the enumerated crimes of burglary and malicious mischief are crimes against a victim's property, and the law considers pets to be personal property.

Further, under the plain language of the Sentencing Reform Act of 1981 (SRA) and RCW 10.99.020(4), a victim is "any person who has sustained emotional, psychological, physical, or financial injury to a person or property as a direct result of the crime charged." Thus, because Fairbanks was directly harmed due to Abdi-Issa's violent killing of her pet, she is a victim.

Also, cases with domestic violence designations may issue pretrial no-contact orders.

Second, the trial court correctly imposed a sentencing aggravator since the offense involved a “destructive and foreseeable impact on persons other than the victim.” The court held that because Fairbanks was a victim of the animal cruelty charge, this made the aggravator applicable because Ludin, who witnessed Mona’s beating, was a person other than the victim who was impacted by the crime. In determining that Ludin was impacted by the domestic violence crime, the court considered the following facts relevant: Ludin was distressed when the police arrived, she had a severe panic attack that night, she continued to have flashbacks throughout the week, and she had trouble sleeping. Consequently, the Supreme Court reversed the decision of the Court of Appeals.

[EXTERNAL LINK: View the Court Document](#)

State v. Putman

No. 81621-7-I

WASHINGTON COURT OF APPEALS

February 22, 2022

Facts Summary

TOPIC: RULES AGAINST POLICE OPINION TESTIMONY

Putman raped and molested his daughter, A.P., for her entire childhood. After A.P. was twenty-three years of age, her mother finally learned of the rape and molestation, and they reported the crimes to the police. Putman turned himself in to the police, and he was interviewed at the station by detectives. During an interrogation, defendant admitted to detectives that he had committed some sexual abuse of his daughter. However, he denied having committed some additional abuse that the daughter had reported to the detective. During that interrogation, the detectives asked defendant numerous times if he believed his daughter was lying about additional abuse or if his daughter was a liar.

During trial, A.P., her mother, her brother, her cousin, and Putman's sister all testified. They each recounted that Putman admitted to committing the rapes and molestations, and A.P. testified in detail about the rapes and molestations against her. Putman moved to redact his interview with the detectives asking about whether A.P. was lying on the grounds that it constituted police opinion testimony. The court denied the motion and allowed the detectives to testify and allowed the State to play the entire police interview.

Eventually, Putman was convicted on three counts of first-degree child rape, one count of first-degree child molestation, and one count of second-degree child molestation. On appeal, the court affirmed Putman's conviction.

Training Takeaway

Putman argued that the court abused its discretion by admitting testimony through portions of his police interview where the detectives asked Putman if he thought his daughter, A.P., was lying about other instances of abuse that he denied or said he could not remember

committing. The issue was whether the officers' questions about A.P. lying were improper opinion testimony when the jury heard them only within the interrogation itself.

The court held that because officers are allowed to give direct testimony repeating statements accusing a witness of lying when it provides context for the interrogation, the questions were not opinion testimony. The court reasoned that because the jurors had heard most of the interview, they understood that the officers asked about A.P. lying to understand Putman's contradictory statements and the differences between Putman and A.P.'s accounts not offered to provide opinion testimony that defendant must have committed the crimes because he would not say that A.P. had lied.

[EXTERNAL LINK: View the Court Document](#)