LAW ENFORCEMENT DIGEST - June 2021

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.

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

CASES

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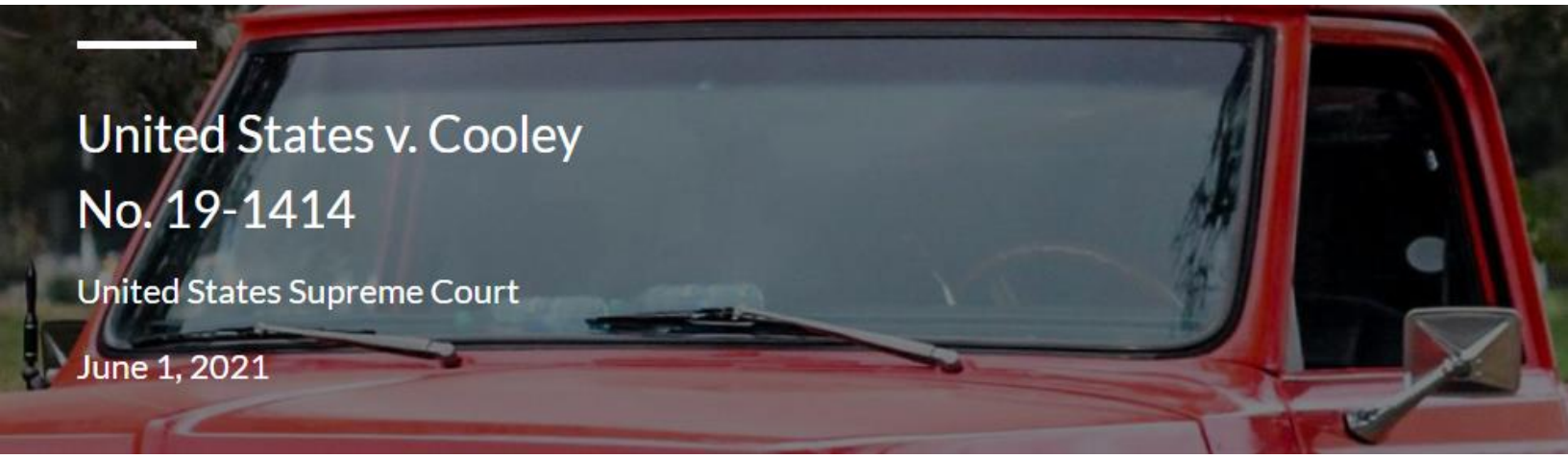
WASHINGTON LEGAL UPDATES

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 or use our Support Portal.
- Author: Linda J. Hiemer, JD| Legal Education Consultant



United States v. Cooley
No. 19-1414

United States Supreme Court

June 1, 2021

Facts Summary

TOPIC: AUTHORITY OF TRIBLE POLICE

Late one evening, Officer Saylor of the Crow Police Department approached a truck parked on United States Highway 212, **a public right-of-way within the Crow** Reservation in the state of Montana. Saylor spoke to the driver, Cooley, and observed that he appeared to be non-native and had watery, bloodshot eyes. Saylor also noticed two semiautomatic rifles lying on Cooley's front seat. Fearing violence, Saylor ordered Cooley out of the truck and conducted a pat-down search. Saylor also observed in the vehicle a glass pipe and a plastic bag that contained methamphetamine.

Additional officers, including an officer with the federal Bureau of Indian Affairs, arrived on the scene in response to Saylor's call for assistance. Saylor was directed to seize all contraband in plain view, leading Saylor to discover more methamphetamine. Saylor took Cooley to the Crow Police Department where federal and local officers further questioned Cooley.

Subsequently, a federal grand jury indicted Cooley on drug and gun offenses. The trial court granted Cooley's motion to suppress the drug evidence. On appeal, the Ninth Circuit affirmed the lower court's ruling reasoning that a tribal police officer could stop and hold for a reasonable time a non-Indian suspect if the officer first tries to determine whether the suspect is non-Indian and, in the course of doing so, finds an apparent violation of state or federal law. The Ninth Circuit concluded that Officer Saylor had failed to make that initial determination as to whether Cooley was a non-

Indian. The United States Supreme Court reversed the Ninth Circuit's ruling.

Training Takeaway

As a general proposition, the "inherent sovereign powers of an Indian tribe do not extend to the activities of nonmembers of the tribe." Tribes "cannot exclude non-Indians from a state or federal highway" and "lack the ancillary power to investigate non-Indians who are using such public rights-of-way."

The Ninth Circuit held that **a tribal police officer could stop (and hold for a reasonable time) a non-Indian suspect, but only if (1) the officer first tried to determine whether "the person is an Indian," and, if the person turns out to be a non-Indian, (2) it is "apparent" that the person has violated state or federal law. Additionally, a tribe retains inherent authority over the conduct of non-Indians on the reservation "when that conduct threatens or has some direct effect on . . . the health or welfare of the tribe."** Similarly, the Supreme Court has held that when the "jurisdiction to try and punish an offender rests outside the tribe, tribal officers may exercise their power to detain the offender and transport him to the proper authorities."

Within the power to transport a non-Indian suspect is the authority to search that individual prior to transport, as several state courts and other federal courts have held. While that authority has sometimes been traced to a tribe's right to exclude non-Indians, tribes "have inherent sovereignty independent of th[e] authority arising from their power to exclude." In addition, **a tribal officer's authority to investigate potential violations of state or federal laws that apply to non-Indians whether outside a reservation or on a public right-of-way within the reservation protects public safety without implicating the concerns about applying tribal laws to non-Indians.**

Prior cases that have denied tribal jurisdiction over the activities of non-Indians on a reservation are distinguishable in that they rested in part upon the fact that full tribal

jurisdiction would require the application of tribal laws to non-Indians who do not belong to the tribe and consequently had no say in creating the laws that would be applied to them. However, the Supreme Court said that Officer Saylor's search and detention did not subsequently subject Cooley to tribal law, but rather only to state and federal laws that apply whether an individual is outside a reservation or on a state or federal highway within the reservation.

Finally, the Supreme Court disagreed with the Ninth Circuit's standards, which would require tribal officers first to determine whether a suspect is non-Indian and, if so, to temporarily detain a non-Indian only for "apparent" legal violations. The Supreme Court reasoned that the first requirement produces an incentive to lie. The second requirement of "apparent" legal violations introduces a new standard into search and seizure law and creates a problem of interpretation that would arise frequently given the prevalence of non-Indians in Indian reservations.

LED Note: Neither the Washington nor the United States Constitution applies to tribes or tribal police officers. Instead, Tribal Police conduct falls under the Indian Civil Rights Act ("ICRA") that provides, in part, that "No Indian tribe in exercising powers of self-government shall … violate the right of the people to be secure in their persons, houses, papers, and effects against unreasonable search and seizures, nor issue warrants, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched and the person or thing to be seized". This standard is comparable to Fourth Amendment of the United States Constitution.

EXTERNAL LINK: https://www.supremecourt.gov/opinions/20pdf/19-1414_8m58.pdf

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Lange v. California
No. 20-18

United States Supreme Court

June 23, 2021

Facts Summary

TOPIC: HOT PURSUIT MISDEMEANOR

Lange drove past a California highway patrol officer, while listening to loud music with his windows down and repeatedly honking his horn. The Officer began to tail Lange, and soon afterward turned on his overhead lights to signal that Lange should pull over. By that time, though, Lange was only about a hundred feet from his home. Rather than stopping, Lange continued to his driveway and entered his attached garage. The officer followed Lange into the garage and began questioning him.

Observing signs of intoxication, the officer put Lange through field sobriety tests. Lange performed poorly, and a later blood test showed that his blood-alcohol content was more than three times the legal limit. The State charged Lange with the misdemeanor of driving under the influence of alcohol, plus a noise infraction.

Lange moved to suppress all evidence obtained after the officer entered his garage, arguing that the warrantless entry had violated the Fourth Amendment. The State contested the motion by contending that the officer had probable cause to arrest Lange for the misdemeanor of failing to comply with a police signal. It argued that the pursuit of a suspected misdemeanant always qualifies as an exigent circumstance authorizing a warrantless home entry.

The California Superior Court denied Lange's motion, and the California Court of Appeals affirmed, accepting the State's argument in full. In the court's view, Lange's failure to pull over immediately when the officer flashed his lights created probable

cause to arrest him for a misdemeanor. The California court added that a misdemeanor suspect could not avoid an arrest set in motion in a public place by retreating to a house or other private place. In this instance, the California court ruled that an officer's "hot pursuit" into the house to prevent the suspect from frustrating the arrest is always permissible under the exigent-circumstances exception to the warrant requirement.

The California Supreme Court denied review. Because courts are divided over whether the Fourth Amendment always permits an officer to enter a home without a warrant in pursuit of a fleeing misdemeanor suspect, the U.S. Supreme Court granted certiorari (review) to resolve the conflict.

Training Takeaway

The Fourth Amendment provides that "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated." The "reasonableness standard" generally requires the obtaining of a judicial warrant before a law enforcement officer can enter a home without permission subject to certain exceptions. **One important exception is for exigent circumstances which applies when the exigencies of the situation make the needs of law enforcement so compelling that a warrantless search is objectively reasonable.**

Under the Fourth Amendment, pursuit of a fleeing misdemeanor suspect does not always—that is, categorically—justify a warrantless entry into a home. Whether a warrantless entry is permissible in such cases requires a case-specific determination as to whether the exigencies of the situation create a compelling need for official action and no time to secure a warrant. Such exigencies may exist when an officer must act to prevent imminent injury, the destruction of evidence, or a suspect's escape. In a prior case, the Supreme Court has held that when a minor offense alone is involved, police officers do not usually face the kind of emergency that can justify a warrantless home entry.

The Supreme Court recognized that this consideration changes when a suspect flees, as in a great many cases, flight creates a need for police to act swiftly. A suspect may flee, for example, because he is intent on discarding evidence. Or his flight may show a willingness to flee yet again, while the police await a warrant. The Court noted that there is no evidence to suggest that flight poses such dangers in every case involving a misdemeanor.

The Supreme Court reasoned:

> The flight of a suspected misdemeanant does not always justify a warrantless entry into a home. An officer must consider all the circumstances in a pursuit case to determine whether there is a law enforcement emergency. On many occasions, the officer will have good reason to enter— to prevent imminent harms of violence, destruction of evidence, or escape from the home. But when the officer has time to get a warrant, he must do so—even though the misdemeanant fled.

Based upon this reasoning, the Supreme Court vacated the California Appeals Court's judgment and remanded the case for further proceedings.

EXTERNAL LINK: https://www.supremecourt.gov/opinions/20pdf/20-18_cb7d.pdf

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Facts Summary

TOPIC: ADMISSIBILITY OF DISCARDED DNA

In November 1989, 18-year-old Amanda Stavik, returned home to rural Whatcom County with her college roommate to celebrate Thanksgiving with her family. On Friday, November 24, 1989, Stavik made plans with her roommate to go out that evening with a former high school friend, Brad, and his friend, Tom Bass, Defendant Timothy Bass's younger brother. Sometime between 2:00 and 3:00 p.m., Stavik decided to go for a run with the family dog along a path that went past Bass's residence. The dog returned home alone. A search ensued, and Stavik's body was found a few days later partially naked and floating in the river adjacent to the running path.

During the autopsy, the medical examiner found semen which led the State to conclude that someone had kidnapped and raped Stavik while she was out on her Friday afternoon run and that she had died while fleeing her captor. The doctor preserved the samples he collected and sent them to the FBI and the Washington State Patrol Crime Lab for analysis.

The Crime Lab developed a DNA profile from the sperm. The police investigation led to several suspects whom they later excluded when their DNA did not match the DNA in the sperm sample. Eventually, the case went cold.

Twenty years later, in 2009, Detective Bowhay reopened the investigation and began asking for DNA samples from anyone who lived in the area or who may have had contact with Stavik near the time of her death. Over the course of the investigation, Detective Bowhay and his team collected more than 80 DNA samples for testing. In

2013, Detective Bowhay asked Bass for a DNA sample. Bass told Detective Bowhay that he did not really know Stavik and initially said he did not know where she lived. Bass refused to provide a DNA sample absent a warrant.

Bass was working as a delivery truck driver for Franz Bakery. Detective Bowhay reached out to Kim Wagner, the manager of the Franz Bakery outlet store, hoping to obtain company consent to swab the delivery trucks for "touch DNA," or DNA left behind when people touch or use something. Detective Bowhay did not identify the employee he was investigating. Wagner told Detective Bowhay he would need to talk with the corporate offices in order to get permission for any such search and provided him with a phone number for the corporate office. The company refused to give permission to law enforcement to search its vehicles.

Over two years later, in May 2017, Detective Bowhay contacted Wagner again and asked her for the general areas of Bass's delivery route. Wagner asked if he was investigating Stavik's murder. He confirmed he was. She asked if his investigation was related to Bass; he again confirmed it was. The detective informed Wagner he was looking for items that Bass might cast off that may contain his DNA. Wagner provided Detective Bowhay information regarding Bass's normal route, and Detective Bowhay agreed to update her if he found anything.

Shortly thereafter, Detective Bowhay surveilled Bass as he drove his route, hoping to collect anything Bass discarded, like cigarette butts, bottles, anything he might have drank from, anything he might have thrown away. He later told Wagner that Bass had not discarded any items. **Wagner indicated that she would see if he discarded any items at work, such as water bottles, and asked if that would help. Detective Bowhay said "okay," but told her that he was not asking her to do anything for him.**

In August 2017, Wagner saw Bass drink water from a plastic cup and throw the cup away in a wastebasket in the bakery's employee break room. She collected that cup and stored it in a plastic bag in her desk. Two days later, she saw Bass drink from a soda can and, again, after he discarded it in the same trash can, she retrieved it and stored it with the cup.

Detective Bowhay did not direct Wagner to take any items and did not tell her how to handle or package these items. Wagner contacted Detective Bowhay via text to let him know she had two items Bass had discarded in the garbage. Detective Bowhay met Wagner in the Franz Bakery parking lot, picked up the items, and sent them to the Washington State Crime Lab for analysis. The Crime Lab confirmed that the DNA collected from Bass's soda can and cup matched the male DNA collected from the semen in Stavik's body. Law enforcement arrested Bass for Stavik's murder in December 2017.

The State charged Bass with first degree felony murder. In pretrial motions, the trial court denied Bass's motion to suppress the DNA evidence obtained from items Wagner collected at the Franz Bakery. The jury found Bass guilty. On appeal, Bass challenged the admissibility of the DNA evidence, arguing Wagner acted as a state agent in conducting a warrantless search in violation of article I, section 7 of the Washington Constitution. The Washington Court of Appeals upheld the lower court's ruling.

Training Takeaway

Under Article I, Section 7 of the Washington Constitution, "[n]o person shall be disturbed in his [or her] private affairs, or his [or her] home invaded, without authority of law." Both this section under the Washington Constitution and the Fourth Amendment to the United States Constitution were intended as a restraint upon sovereign authority. This rule does not apply to the acts of private individuals. But evidence discovered by a private citizen while acting as a government agent is subject to the rule.

To prove a private citizen was acting as a government agent, the defendant must show "that the State in some way 'instigated, encouraged, counseled, directed, or controlled' the conduct of the private person." The "mere knowledge by the government that a private citizen might conduct an illegal private search without the government taking any deterrent action [is] insufficient to turn the private search into a governmental one."

For an agency relationship to exist, there must be "a manifestation of consent by the police that the informant acts for the police and under their control and consent by the informant that he or she will conduct themselves subject to police control."

The trial court heard live testimony from both Detective Bowhay and Wagner. At the conclusion of that hearing, the trial court found that Wagner was not acting as an agent of Detective Bowhay when she retrieved the plastic cup and soda can from the garbage can at the Franz Bakery outlet store because it was Wagner who conceived the idea to search the garbage, and Detective Bowhay did not direct, entice, or instigate Wagner's search.

Reviewing this testimony, the Court of Appeals held that substantial evidence supported the trial court's finding that Detective Bowhay did not direct, entice, or control Wagner and Wagner was not acting as a state agent when she retrieved Bass's cup and soda can from the workplace trash can. The Court added that, "These findings in turn support the legal conclusion that Wagner's seizure of Bass's discarded items and the DNA evidence was not the fruit of an unlawful search." Therefore, the Court of Appeals upheld the conviction.

EXTERNAL LINK: https://www.courts.wa.gov/opinions/pdf/801562.pdf

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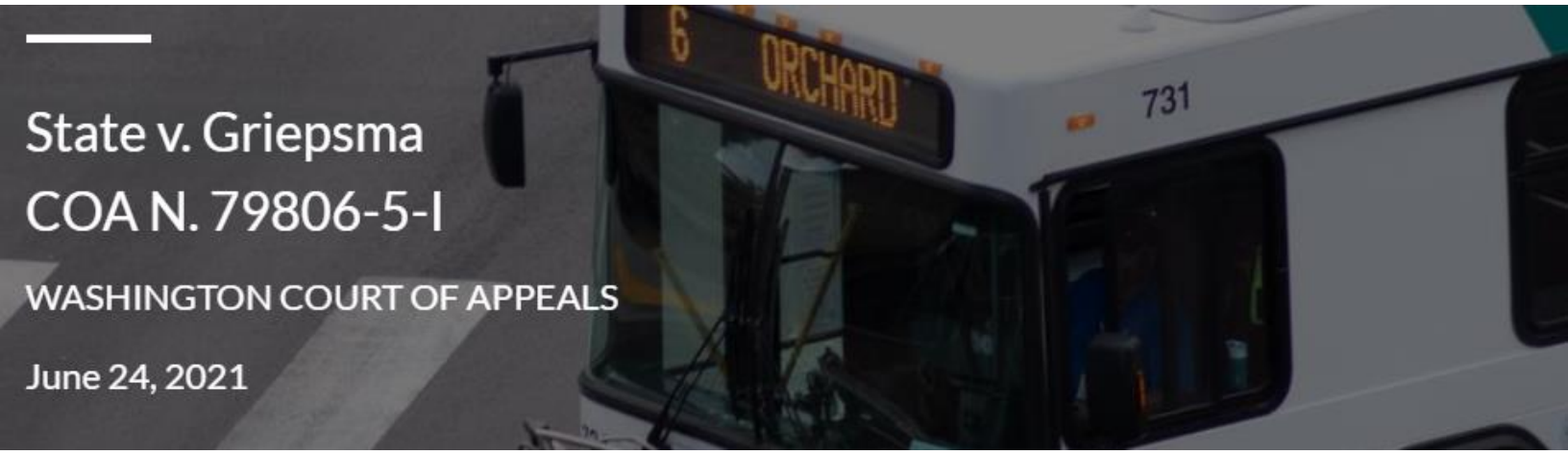


State v. Griepsma
COA N. 79806-5-I

WASHINGTON COURT OF APPEALS

June 24, 2021

Facts Summary

TOPIC: THIRD DEGREE ASSAULT UPON A CORRECTIONS OFFICER

In February 2018, after a bus driver asked Griepsma to get off a bus and Griepsma refused, Griepsma got into a conflict with Skagit Transit employees at a transit station in Mount Vernon. Police officers arrived, and in the subsequent interaction, Griepsma punched the officers, resulting in charges for assault and resisting arrest. While in the Skagit County Jail, Griepsma twice spit on a corrections officer and, in one incident, swung a door at one corrections officer and pushed a different officer's head to the floor, causing a concussion.

The State added several additional third degree assault charges for these incidents against the corrections officers on the basis that Griepsma had assaulted "a law enforcement officer or other employee of a law enforcement agency" pursuant to RCW 9A.36.031(1)(g). The State also charged Griepsma with two counts of second degree assault, one against an arresting officer and one against a corrections officer.

The jury found Griepsma guilty on all but one of the third-degree assault charges. On appeal, Griepsma contended that the State failed to prove every element of third-degree assault under RCW 9A.36.031(1)(g). Specifically, Griepsma argued that the State failed to prove that the victims in these incidents qualified as law enforcement officers or other employees of a law enforcement agency. The Washington Court of Appeals disagreed and upheld the convictions.

Training Takeaway

Laws (statutes) are enacted by the legislature. Where the legislature has not defined a term within a statute, courts may look to dictionary definitions, as well as the statute's context (or intent), to determine the plain meaning of the term. RCW 9A.36.031(1)(g) defines third degree assault to include assault against "a law enforcement officer or other employee of a law enforcement agency who was performing his or her official duties at the time of the assault."

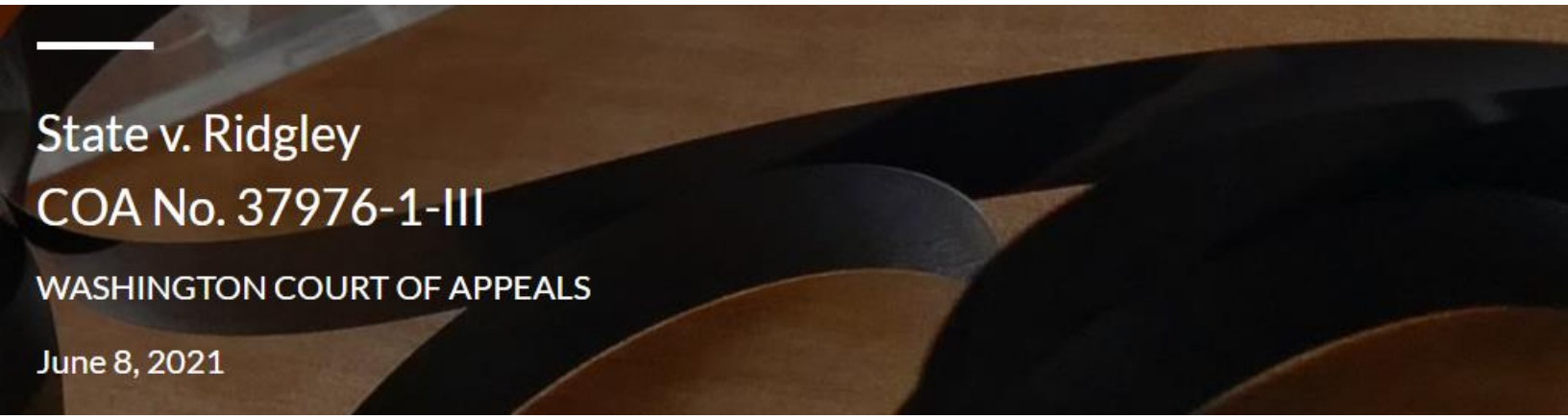
NOTE: To read the statute, see https://app.leg.wa.gov/RCW/default.aspx?cite=9A.36.031

In the dictionary, "[L]aw enforcement" means "the department of people who enforce laws, investigate crimes, and make arrests." MERRIAM-WEBSTER'S ONLINE DICTIONARY"). The Court noted that a sheriff's office is a law enforcement agency.

The Washington Court of Appeals confirmed that the victims in these incidents were all corrections officers employed by the Skagit County Sheriff's Office. Previous Washington case law has described county sheriff's actions as authorized by a statute delegating power to "law enforcement agencies." Therefore, although corrections officers who are employed by a sheriff's office may not be "law enforcement officer[s]," they are nonetheless "employee[s] of a law enforcement agency." RCW 9A.36.031(1)(g).

The Court held that the State established that the victims were employed by the Skagit County Sheriff's Office. Accordingly, they fell into the class of victims described by RCW 9A.36.031(1)(g). Therefore, the Court concluded that there was sufficient evidence to support the convictions.

EXTERNAL LINK: https://www.courts.wa.gov/opinions/pdf/798065%20%20order-opinion.pdf



State v. Ridgley
COA No. 37976-1-III

WASHINGTON COURT OF APPEALS

June 8, 2021

Facts Summary

TOPIC: WASHINGTON'S PRIVACY ACT

The Joint Narcotics Enforcement Team (JNET) suspected Scott Ridgley of dealing methamphetamine. JNET officers organized two controlled buys and a search at Ridgley's residence to confirm their suspicions. For each of the two buys, officers utilized a confidential informant equipped with a body wire. The informant turned over methamphetamine after each controlled buy.

JNET did not obtain a warrant for the informant's body wire. Instead, it relied on a provision of Washington's Privacy Act, RCW 9.73.230, sanctioning undercover narcotics recordings based on self-authorization by a law enforcement agency.

Detective Withrow prepared a report as part of his application for the self-authorizations. The chief of police signed the authorizations. Each of Detective Withrow's **reports identified "Detective Withrow, and/or any other officers participating in this investigation" as the officers authorized to intercept, transmit, or record the communication.** The subsequent warrant for Ridgley's residence referenced the wire intercepts.

The State charged Ridgley with methamphetamine delivery as well as other charges. Prior to trial, Ridgley filed a motion to suppress. Among other things, he argued the wire intercept authorizations were invalid because their accompanying reports failed to name all the officers participating in the undercover recordings. The trial court denied the motion. A jury then convicted Ridgley on all counts. Ridgley appealed.

The Court of Appeals reversed the trial court's decision and held that the intercept

authorizations at issue in this case were invalid and evidence related to the undercover recordings should have been suppressed from Ridgley's trial.

Training Takeaway

Washington's privacy act generally prohibits intercepting and recording any private communications without full consent of the parties. An exception applies in the context of narcotics investigations. A law enforcement agency may self-authorize an undercover narcotics recording so long as the agency satisfies the criteria set forth in RCW 9.73.230.

The criteria include three statutory prerequisites for self-authorization. RCW 9.73.230(1)(a)-(c). One of the prerequisites is a **written report**, prepared and signed at the time of the authorization, that **must "indicate . . . the names of the officers authorized to intercept, transmit, and record the conversation or communication**." RCW 9.73.230(2)(c). The State argued that the word "indicate" in the statute did not require persons to be listed "with exact precision and certainty." Instead, the State claimed it was enough to provide a generalized statement, setting forth the names of the officers "known at the time" of the report. The Court disagreed noting that valid self-authorization demands **strict compliance with the statute**.

The Court said that the report must identify the specific officers authorized to intercept, transmit or record a communication. The State's reference in the report to **"Detective Withrow, and/or any other officers participating in this investigation" as the officers authorized to intercept failed to meet the criterion. Therefore, a self-authorization issued pursuant to RCW 9.73.230 that does not include the names of each and every officer authorized to intercept, transmit, and record the undercover communications, as required by RCW 9.73.230(2)(c), is invalid. A report that identifies by name one authorized officer, along with a catchall phrase to include "any other" investigating officers is invalid.**

EXTERNAL LINK: https://www.courts.wa.gov/opinions/pdf/379761_pub.pdf