LAW ENFORCEMENT DIGEST - May 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

CASES

1. UNITED STATES SUPREME COURT (USSC)

- Caniglia v. Strom, _____ S.Ct.___, 2021 WL 1951784 (May 17, 2021)
    - TOPIC: SEARCH & SEIZURE/"COMMUNITY CARETAKING" EXCEPTION

2. NINTH CIRCUIT COURT OF APPEALS (the "Ninth Circuit")

- United States v. Brown, No. 19-50250 (9th Cir. May 12, 2021)
    - TOPIC: SEARCH & SEIZURE/TERRY STOP AND FRISK EXCEPTION
- United States v. Holiday, No. 20-50157 (9th Cir. May 27, 2021)
    - TOPIC: SEARCH & SEIZURE/EMERGENCY CIRCUMSTANCES EXCEPTION

3. WASHINGTON COURT OF APPEALS

- State v. Pines, COA No. 80450-2-I (May 17, 2021)
    - TOPIC: SEARCH & SEIZURE/ TERRY STOP AND SEARCH INCIDENT TO ARREST EXCEPTIONS

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

Facts Summary

TOPIC: SEARCH & SEIZURE / "COMMUNITY CARETAKING" EXCEPTION

During an argument with his spouse at their home (in Rhode Island), Edward Caniglia went into the bedroom, retrieved a handgun, put it on the dining room table, and asked his wife to "shoot [him] now and get it over with." His wife refused, left the home, and spent the night at a hotel. The next morning, when she tried but could not reach Caniglia by phone, she called the police to request a welfare check.

Police accompanied Caniglia's wife to the home, where they encountered Caniglia on the porch. Caniglia spoke with police and confirmed his wife's account of the argument, but he denied being suicidal. **Thinking that Caniglia posed a risk to himself or others, police called an ambulance. Caniglia agreed to go to the hospital for a psychiatric evaluation—but only after police allegedly promised not to confiscate his firearms.** Once the ambulance left with Caniglia, the police entered the home with Caniglia's wife—whom they allegedly misinformed about her husband's wishes— and the police seized two handguns.

Caniglia sued, claiming that police violated the Fourth Amendment when they entered his home and seized his firearms without a warrant.

The District Court granted summary judgment in favor of police, and the First Circuit Court of Appeals affirmed solely on the ground that the decision to remove Caniglia

and his firearms from the premises fell within a "community caretaking exception" to the warrant requirement.

The United States Supreme Court (USSC) agreed to review the case ("granted certiorari"). Upon review, **the USSC vacated the judgment and remanded for further proceedings.**

Training Takeaway

The Fourth Amendment protects "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures." The Fourth Amendment does not prohibit all unwelcome intrusions – only "unreasonable" ones. The

USSC has recognized a few permissible invasions of the home. The USSC has also held that law enforcement officers may enter private property without a warrant when certain exigent circumstances exist, including the need to "render emergency assistance to an injured occupant or to protect an occupant from imminent injury." [case citations omitted].

The USSC noted that the First Circuit's "community caretaking" rule went beyond anything the USSC has recognized. Police lacked a warrant or consent from Caniglia, and police expressly acknowledged they were not reacting to a crime.

The First Circuit relied upon another USSC case, Cady v. Dombrowski, 413 U.S. 433 (1973), that involved a warrantless search for a firearm. But the location of that search was an impounded vehicle—not a home – "a constitutional difference" that the Cady court repeatedly stressed.

The court's clear distinction between vehicles and homes placed into proper context a "community caretaking" exception. The USSC recognized the frequency with which vehicles can and do become disabled or involved in accidents on public highways and often require police to perform noncriminal "community caretaking" functions, such

as providing aid to motorists. But recognizing "that police officers perform many civic tasks in modern society was just that—a recognition that these tasks exist, and not an open-ended license to perform them anywhere."

The USSC criticized the lower court for ignoring whether anyone had consented to police' actions; whether these actions were justified by "exigent circumstances"; or whether any state law permitted this kind of mental-health intervention. All that apparently mattered to the lower court was that "police efforts to protect Caniglia and those around him were distinct from 'the normal work of criminal investigation."

In his concurring opinion, Justice Alito commented that *"[t]his case also implicates another body of law that petitioner glossed over: the so-called 'red flag' laws that some States are now enacting.*

These laws enable the police to seize guns pursuant to a court order to prevent their use for suicide or the infliction of harm on innocent persons." Justice Alito added that these red-flag laws typically specify the standard that must be met and the procedures that must be followed before firearms may be seized. He observed that *"provisions of red flag laws may be challenged under the Fourth Amendment, and those cases may come before us. Our decision today does not address those issues."*

Red-flag laws: See, for example, Washington RCW 7.94 Extreme Risk Protection Order ("ERPOs") at https://app.leg.wa.gov/RCW/default.aspx?cite=7.94.010

Facts Summary

TOPIC: SEARCH & SEIZURE/EMERGENCY CIRCUMSTANCES EXCEPTION

Two police officers responded to a radio call of two "transients" (one male and one female) loitering at a local motel and the male, identified by the caller as white, was seen urinating in nearby bushes. When the police arrived, they observed two males, one white and one black, conversing in the motel parking lot. The police approached and asked what they were doing and explained the report of public urination. The black male, who identified himself as Brown, said it wasn't him, but implied that the white male, Bartlett, had urinated. The police conversed with both men casually for approximately 7 minutes.

Knowing that the area is a common spot for drug dealing, the police asked the two men directly, *"So, do we have a drug deal going on here?"* Brown said, *"A drug deal? No, sir."* After a few more minutes of conversation, the officer noticed Brown "put his hands down to his sides" and then he "reach[ed] his index finger into his right pocket." The officer approached Brown, who raised his hands and said: *"Oh, my bad, man, my bad."*

Then, the officer ordered Brown to stand up and turn around. Brown complied and allowed the officer to secure his arms behind his back in a finger hold. Pointing with his free hand to Brown's pants pocket, the officer asked, *"What's in here?"* Brown

responded, *"I'm not quite sure."* The officer stated he was going to check, reached into Brown's pocket, and pulled out a plastic bag that turned out to be heroin. The officer proceeded to conduct a more thorough search of Brown, finding several thousand dollars, a few unused syringes, and suboxone strips used to treat opioid withdrawal. **Brown was charged with and convicted of possession of heroin with intent to distribute.**

Brown filed a Motion to Suppress the "fruits" of a search of his pocket and his subsequent conviction on the grounds that the police officers did not comply with the limitations set forth in Terry v. Ohio, 392 U.S. 1 (1968), and that the evidence the officers found on him should have been suppressed as fruits of a violation of his Fourth Amendment rights.

The lower court denied the Motion to Suppress. **On appeal, the Ninth Circuit reversed.**

Training Takeaway

The Fourth Amendment protects the "right of the people . . . , against unreasonable searches and seizures." U.S. Const. amend. IV. Warrantless searches and seizures are intrinsically unreasonable under the Fourth Amendment—subject only to a few specifically established and well delineated exceptions. [cites omitted] **The "Terry Stop" is one such exception, which refers to a brief investigative detention** as described in Terry v. Ohio, 392 U.S. 1 (1968).

Under Terry, a police officer who observes unusual conduct which leads the officer reasonably to conclude in light of experience that criminal activity may be occurring may briefly stop the suspicious person and make reasonable inquiries aimed at confirming or dismissing the police officer's suspicions.

During the Terry stop, if the officer justifiably believes that the person is armed and presently dangerous to the officer or to others, the officer may conduct a pat down search to determine whether the person is in fact carrying a weapon. Each element, the stop and the frisk, must be analyzed separately; the reasonableness of each must be independently determined.

On appeal, the Ninth Circuit noted that the officers' encounter with Brown was consensual until the officer ordered Brown to stand up and turn around. At that point, the officer had seized Brown, but the seizure was justified because the officer had developed reasonable suspicion that Brown was engaged in a drug transaction (a "Terry stop").

The Ninth Circuit added that the officer was justified in conducting a frisk of Brown based on reasonable safety concerns. However, it **determined that the officer's search of Brown's pocket exceeded the limited scope of what Terry permits** because, in conducting the limited protective search for weapons that Terry authorizes, the officer did not perform any pat down or other initial limited intrusion (a "Terry frisk"), but proceeded directly to remove and examine the item in Brown's pocket (plastic bag containing heroin).

United States v. Holiday
No. 20-50157
Ninth Circuit Court of Appeals
May 27, 2021

Facts Summary

TOPIC: SEARCH & SEIZURE/EMERGENCY CIRCUMSTANCES EXCEPTION

In early 2017, Holiday robbed or attempted to rob ten businesses, each of which was captured in surveillance footage. During Holiday's trial, the prosecution provided body camera footage as evidence from an unrelated police encounter at Holiday's home. In the footage, Holiday was wearing blue Nike Cortez shoes with white trim, which matched the description of the shoes the suspect was wearing during one of the robberies.

The body camera footage was taken on February 7, 2017, after police received a report that a man was hitting a child in the backseat of a blue Jaguar. Police ran the Jaguar's license plate and found it was registered to a person with the initials M.B., at a certain address.

When San Diego Police Department officers arrived at that address, one of them knocked on the front door, tried the handle, and found it was unlocked. The officer pushed the door open but remained standing on the threshold. Holiday and his wife were on their way to the door when the officer opened it; they told the officers that their children were at school and that they did not own a blue Jaguar. There was no evidence that the officers saw a blue Jaguar at or near Holiday's residence. The officers took Holiday's name and left.

At his robbery trial, Holiday moved to suppress the bodycam footage of this encounter on the ground that it was collected in violation of the Fourth Amendment. The District Court denied the suppression motion based on exigent circumstances.

The jury convicted Holiday for his role in all ten robberies. Holiday appealed to the Ninth Circuit Court of Appeals, contending among other things that the District Court incorrectly denied his motion to suppress the body camera footage. **The Ninth Circuit agreed with Holiday on this limited issue.**

Training Takeaway

The Ninth Circuit Court of Appeals observed that the San Diego Police Department had not obtained a warrant to search Holiday's home in connection with the report of child abuse in a blue Jaguar registered to Holiday's address. The Court noted that "searches and seizures inside a home without a warrant are presumptively unreasonable," and therefore violate the Fourth Amendment, unless subject to an established exception. (citations omitted).

The Government conceded that opening Holiday's front door constituted a search, but also argued that the search was constitutional pursuant to the emergency exception to the warrant requirement.

The Court explained that pursuant to the emergency exception, police need not obtain a search warrant to enter a dwelling if:

> "(1) considering the totality of the circumstances, law enforcement had an objectively reasonable basis for concluding that there was an immediate need to protect others or themselves from serious harm; and
>
> (2) the search's scope and manner were reasonable to meet the need."
> United States v. Snipe, 515 F.3d 947, 952 (9th Cir. 2008)

In other cases, the Court had found the emergency exception to the warrant requirement satisfied where police have an objectively reasonable belief that the victim is inside the home and in danger.

The Court of Appeals found that the Government failed at the second prong of the Snipe emergency exception test because the officers had no reason to believe that the child victim was in the home at the address where the Jaguar was registered. Moreover, they had reason to believe the child was not in the home, since the tip they received was that the child was in a blue Jaguar.

If the incident in the Jaguar had not ended, it was clearly unreasonable for the officers to have believed that the victim of the reported crime was inside Holiday's residence. In order to show that "the search's scope and manner were reasonable to meet the need," the Government must provide a logical and sound link between the information police have and the search they conduct.

The Ninth Circuit Court of Appeals held that the District Court erred by denying the motion to suppress the body camera footage from inside the home. However, the Ninth Circuit concluded that the error in admitting the body camera evidence was harmless because of the strength of the other evidence against Holiday in at least one of the robberies.

EXTERNAL LINK: https://cdn.ca9.uscourts.gov/datastore/opinions/2021/05/27/20-50157.pdf

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Facts Summary

TOPIC: SEARCH & SEIZURE/ TERRY STOP AND SEARCH INCIDENT TO ARREST EXCEPTIONS

In late March 2018, the anticrime team and gang units of the Seattle Police Department conducted an operation to locate individuals with warrants in specified areas of the city. After a morning briefing, one officer (Officer Adams) was working plain clothes and attempting to locate "wanted subjects." Officer Adams was in his vehicle when he saw Pines and recognized him. Officer Adams was aware of a February 2018 King County Sheriff's bulletin identifying a warrant for Pines on residential burglary and domestic violence. Officer Adams knew that Pines was previously convicted of a felony.

Officer Adams followed Pines, saw him enter a pizzeria restaurant, and sit down. Officer Adams advised the uniformed arrest team that Pines was in the restaurant. Officer Adams waited for uniformed officers to arrive. Officer Adams did not verify the warrant at that time. As Officer Brown and two other uniformed officers entered, Pines began moving toward the other door. The officers tackled Pines to the ground, held him down by the neck and head, and handcuffed him.

After seeing Pines attempt to leave, Officer Adams entered the restaurant. As the officers were handcuffing Pines, Officer Adams yelled out *"you're under arrest for your felony warrant."* Officer Brown saw Pines' hand move towards his waistline, giving him concern that Pines had a weapon. Once cuffed, Officer Brown asked Pines, *"You got a gun on you? Where's it at? Your pocket?"* Pines responded, *"Yes, sir."* The officers then frisked Pines and found a handgun in his jacket pocket. Officers escorted Pines outside and read him his Miranda rights. Thirteen minutes after detaining Pines, the police verified that there was a valid warrant for Pines' arrest.

Pines was charged with and convicted of unlawful possession of a firearm in the first degree. Pines moved to suppress the handgun recovered during the search on the grounds that police discovered the handgun after arresting him without probable cause. The trial court denied the motion to suppress ruling instead that the handgun was discovered during a Terry seizure that was supported by reasonable suspicion. **The Washington Court of Appeals, Division I, reversed the conviction.**

Training Takeaway

Under Article I, section 7 of the Washington Constitution, warrantless searches are per se unreasonable unless one of the narrowly drawn exceptions to the warrant requirement applies. The issue was whether the warrantless search of Pines was valid as a Terry stop or as a search incident to arrest. It was undisputed that Pines was "seized" at the time the arresting officers searched him and recovered the handgun.

A person is seized when an officer, by physical force or show of authority, restrains the person's freedom of movement such that a reasonable person would not believe they were free to leave.

Under Terry, a police officer may temporarily detain a person based on a reasonable suspicion that the person is or has been involved in a crime. Courts also use an objective standard to determine whether an encounter with the police rises to the level of a formal arrest.

The State claimed that the officers' tactics of tackling and handcuffing Pines were legitimate under Terry. The Court of Appeals disagreed holding that Pines' seizure exceeded the scope of a valid Terry stop and constituted an arrest. Pines argued that the seizure of his gun was not a valid search (search incident to arrest) because the arrest itself was invalid and, therefore, the police lacked probable cause to search.

A search incident to arrest is another one of the carefully drawn and guarded exceptions to the article I, section 7 warrant requirement. Only a lawful arrest provides authority for a search incident to arrest. The lawfulness of an arrest depends on the existence of probable cause. Probable cause arises from facts that are recent and contemporaneous, not stale.

The court determined that "common sense dictates that the information on a valid warrant for Pines was stale." Officer Brown testified that, had he been in charge, he would have verified the warrant on the morning before the operation. Yet the State offered no testimony that anyone had done so. Instead, Officer Adams relied upon a recollection of a valid warrant from a bulletin more than one month earlier.

During trial testimony, Officer Brown disagreed with Officer Adams's statement during the arrest that Pines was under arrest on the felony warrant, because he believed that verification of the warrant was necessary prior to an arrest on the warrant.

The court ruled that because there was no evidence offered of reasonably contemporaneous verification of an existing warrant, the police lacked probable cause to arrest Pines on the warrant at the time of the arrest. **Without probable cause for the arrest, the warrantless search of Pines was invalid and in violation of article I, section 7.**